



GOVERNMENT OF ORISSA
LAW DEPARTMENT

THE ORISSA CODE IN SEVEN VOLUMES

Volume III

[*Bihar and Orissa Acts, 1913–1935*]

First Edition

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Cuttack
1949

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PREFACE

This, the third volume of the first edition of the Orissa Code contains Bihar and Orissa Acts passed between the 1st April 1912 and 1st March 1936 which are still in force in the Province of Orissa in any part of the Province.

Though the Bihar and Orissa Local Self-Government Act, 1885 (Act III of 1885) is now in force in the ex-B. & O. area, this Act has not been printed in this volume as a consolidated Bill on the subject, namely, the Orissa Local Government Bill, 1949 has already been introduced in the Legislative Assembly and it is hoped that the same would be passed into an Act before Vol. VII (Orissa Acts) is sent to the Press for printing.

The Acts included in this volume are printed generally as modified upto the 31st October 1949. The system as described in the Preface to Volume I of this Code has been followed in compiling this volume.

'AGR
1st November 1949

C. C. GOARI
Secretary to Government of Orissa
Law Department

LIST OF ABBREVIATIONS USED

A. O.	... ...	... ...	for Government of India (Adaptation of Indian Laws) Order, 1937, as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.
B. I.	... ...	... ...	British India
B. & O.	... ...	... ...	Bihar and Orissa
Ben.	... ..	... ..	Bengal
Ch.	... ...	... ..	Chapter
Ct.	.. ...	... ..	Clause
Col. Stat. Ind.	... ...	... ..	Collection of Statutes relating to India
C. P.	... ...	... ..	Central Provinces
Gen. R. & O.	... ..	... ..	General Statutory Rules and Orders
G. G. in C.	... ...	... ..	Governor-General in Council
G. of I.	... ...	... ..	Government of India
G. in C.	... ...	... ..	Governor in Council
Govt.	... ...	... ..	Government
I. O.	... ...	... ..	The India (Adaptation of Existing Indian Laws) Order, 1947.
I. I. O.	... ...	... ..	The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
Ins.	.. ...	... ..	Inserted
l. o. G.	... ...	... ..	local official Gazette
L. G.	... ...	... ..	Local Government
L. S. R. & O.	... ...	... ..	Local Statutory Rules and Orders
'Mad.	... ..	... ..	Madras
Pt.	... ...	... ..	Part
P.	... ...	... ..	page
pp.	... ...	... ..	pages
Reg.	... ...	... ..	Regulation
Rep.	... ...	... ..	Repealed
S.	... ...	... ..	Section
Sch.	... ...	... ..	Schedule
Se.	... ...	... ..	Sections
Subs.	... ...	... ..	Substituted
Vol.	... ...	... ..	Volume

CHRONOLOGICAL TABLE OF BIHAR AND ORISSA ACTS IN FORCE
IN ORISSA, 1913-1935

Year	No.	Short title or Subject
1	2	3
1913	I	The Bihar and Orissa Board of Revenue Act, 1913
"	II	The Orissa Tenancy Act, 1913
1914	III	The Jharia Water-Supply Act, 1914
"	IV	The Bihar and Orissa Public Demands Recovery Act, 1914
1915	II	The Bihar and Orissa Excise Act, 1915
1916	III	The Bihar and Orissa Decentralization Act, 1916
1917	I	The Bihar and Orissa General Clauses Act, 1917
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1920	I	The Bihar and Orissa Municipal Survey Act, 1920
"	II	The Bihar and Orissa Places of Pilgrimage Act, 1920
"	IV	The Bihar and Orissa Mining Settlements Act, 1920
"	VIII	The Bihar and Orissa Karmauti Agreements Act, 1920
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"	III	The Bihar and Orissa Village Administration Act, 1922
"	VII	The Bihar and Orissa Municipal Act, 1922
1923	VI	The Bihar and Orissa State Aid to Industries Act, 1923
1924	I	The Bihar and Orissa (Central Provinces Municipal) Repealing Act, 1924.
"	III	The Bihar and Orissa Aerial Ropeways Act, 1924
1926	I	The Bihar and Orissa Mussalman Wakf (Amendment) Act, 1926
"	III	The Bihar and Orissa Highways Act, 1926
1930	I	The Bihar and Orissa Mica Act, 1930
"	II	The Bihar and Orissa Motor Vehicles Taxation Act, 1930
1934	I	The Bihar and Orissa Natural Calamities Loans
"	III	The Indian Forest (Bihar and Orissa)
1935	VI	The Bihar and Orissa Co-operative Societies
"	IX	The Indian Forest (Bihar and Orissa Amendment)

THE ORISSA CODE

VOLUME III

BIHAR AND ORISSA ACTS FROM 1913 TO
1935 IN FORCE IN THE PROVINCE OF ORISSA.

BIHAR AND ORISSA ACT I of 1913

(THE BIHAR AND ORISSA BOARD OF REVENUE ACT, 1913)

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1. Short title
2. Designation of Board
3. Number of Members of Board
4. Powers and duties of additional Member
5. Construction of references to former Boards
6. Review of orders by Board
7. Repeal

THE SCHEDULE—ENACTMENTS REPEALED

BIHAR AND ORISSA ACT I OF 1913

(THE BIHAR AND ORISSA BOARD OF REVENUE ACT, 1913)¹

(21st May, 1913)

An Act to alter the constitution of the Board of Revenue for Bihar and Orissa

Whereas it is expedient to alter the constitution of the Board of Revenue for Bihar and Orissa;

And whereas the sanction of the Governor-General has been obtained under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:—

1. This Act may be called the Bihar and Orissa Board of Revenue Act, 1913. Short title

2. [Board of Revenue for the Province * * * * ² Designation of Board.
shall be called the Board of Revenue * * *].

1. LEGISLATIVE PAPERS—For Statement of Objects and Reasons, see B. and O. Gazette, 1913, Pt. V, p. 5; for Proceeding in Council, see *ibid.* Pt. VI, pp. 292 and 293.

NOTE—This Act was not referred to a Select Committee.

LOCAL EXTENT—This Act extends to the whole of the former province of Bihar and Orissa.

The application of this Act is barred in—

(i) the district of Angul by the Angul Laws Regulation, 1936 (Reg. V of 1936), s. 3 (2);

(ii) the district of Khondmals by the Khondmals Laws Regulation, 1936 (Reg. IV of 1936), s. 3 (2).

2. The words "of Bihar and Orissa" omitted by the A. O.

3. The words "for Bihar and Orissa" omitted by *ibid.*

4. As to where the Board is to be stationed and where members are to reside, see the Bengal Revenue Commissioners Regulation, 1829 (Reg. I of 1829), s. 4 (1) and (2), in Vol. I of this Code.

The Revenue Commissioner is the Court of Wards, see the Orissa Court of Wards Act, 1947 (Orissa Act XXVI of 1947), s. 5 (1).

As to the control of the Government over the Board, see the Bengal Revenue Commissioners Regulation, 1829 (Reg. I of 1829), s. 4 (2) in Vol. I of this Code.

As to the exercise of functions of the Board by other authorities, see—

(1) the present Act, s. 4 (powers and duties of the temporary additional Member),

(2) the Bengal Land-revenue Settlement Regulation, 1822 (VII of 1822), s. 35, in Vol. I of this Code (Boards, Committees and authority of

(3)

1829 (Reg. I of Commissioners of

(Secs. 3-7)

Number of
Members
of Board.

3. The said Board shall consist of one Member only, to be appointed by the [Provincial Government]¹ by notification in the [Official Gazette]²:

Provided that the [Provincial Government]¹ may, at any time, by like notification, * ^{*3} appoint a temporary additional Member.

Powers and
duties of
additional
Member.

4. An additional Member of the Board of Revenue appointed under the proviso to section 3 shall exercise and perform such powers and duties of the Board as the [Provincial Government]¹ may direct.

Construction
of references
to former
Boards.

5. All references in any enactment or in any notification, order, scheme, rule, form or by-law issued, made or prescribed under any enactment to —

(a) the Board of Revenue as constituted under the Bengal Board of Revenue Regulation, 1822,⁴ and under clause first of section 4 of the Bengal Revenue Commissioners Regulation 1829,⁵ or

(b) the Board whose functions were transferred to the said Board of Revenue by the Bengal Board of Revenue Act, 1850⁶,

Reg.
1822.
Reg.
1829.XLIV
1850.

shall be construed as references to the Board as re-constituted by or under this Act.

6. Every application for review of any order of the Board of Revenue by the Provincial Government of the same; a notice of the application is for so doing, it may review the order and pass such further order as it thinks fit.

(2) Every application under sub-section (1) for a review of any order must be made within a period of three months from the date of the order :

Provided that the Board may in its discretion in any case extend such period, if sufficient reasons be shown for so doing.

Repeal.

7. The enactments specified in the Schedule are hereby repealed, to the extent mentioned in the fourth column thereof.

1. Substituted by the A. O. for "L. G."

2. Substituted by *ibid* for "I. o. G."

3. The words "with the previous sanction of the Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920), s. 2 and Sch. I.

4. Bengal Reg. III of 1822 and Act XLIV of 1850 are rep. by this Act, see the Schedule.

5. Printed in Vol. I of this Code.

I of 1913]

THE BIHAR AND ORISSA BOARD
OF REVENUE ACT, 1913.

(*The Schedule.*)

THE SCHEDULE

ENACTMENTS REPEALED

(*See section 7*)

Year	No.	Short title	Extent of repeal
1	2	3	4

Bengal Regulation

1822	III	The Bengal Board of Revenue Regulation, 1822.	So much as is unrepealed
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Acts of the Governor-General of India in Council

1850	XLIV	The Bengal Board of Revenue Act, 1850.	So much as is unrepealed
1874	XV	The Laws Local Extent Act, 1874.	So much of the fourth Schedule as relates to Bengal Regulation III of 1822 and Act XLIV of 1850.
1891	XII	The Amending Act, 1891	So much of the second Schedule as relates to Bengal Regulation III of 1822.
1903	I	The Repealing and Amending Act, 1903 ¹ .	So much of the second Schedule as relates to Bengal Regulation III of 1822.
1912	VII	The Bengal, Bihar and Orissa and Assam Laws Act, 1912.	Section 4.

1. Now called the Amending Act, 1903 (I of 1903), see s. 3, Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

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ion of c

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BIHAR AND ORISSA ACT II OF 1913

(THE ORISSA TENANCY ACT, 1913)¹

(11th June, 1913)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant in the districts of Cuttack, Puri and Balasore, in the Orissa Division.

Whereas it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant in the districts of Cuttack, Puri and Balasore, in the Orissa Division;

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Orissa Tenancy Act, 1913;

Short title,
commencement
and local extent

(2) It shall come into force² on such date as the [Provincial Government]³, with the previous sanction of the [Central Government]⁴ may, by notification in the [Official Gazette]⁵, appoint in this behalf; and

(3) It shall extend to the districts of Cuttack, Puri and Balasore in the Orissa Division, except any area or part of an area which is constituted a Municipality under the Bengal Municipal Act, 1884,⁶ and which is specified in this behalf by notification issued by the [Provincial Government]⁷.

2. The enactments specified in Schedule I are hereby repealed Repeal.
in the area to which this Act extends.

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Bihar and Orissa Gazette, 1913, Pt. V, pp. 93-106; for Report of the Select Committee, see *ibid.*, Extraordinary, pp. i to iv; for Proceedings in Council, see *ibid.*, Pt. VI, pp. 309-371.

LOCAL EXTENT.—See s. 1 (3) above

The application of this Act is barred in—

(i) the district of Angul by the Angel Laws Regulation, 1936 (Reg. V of 1936), s. 3 (2)

(ii) the district of Khondmals by the Khondmals Laws Regulation, 1936 (Reg. IV of 1936), s. 3 (2).

2. The Act came into force on the 12th September, 1913, see Notification No. 5970R, dated the 29th August, 1913, published in the Bihar and Orissa Gazette, 1913, Pt. II, p. 1039.

3. Substituted by the A. O. for "L. G."

4. Substituted by *ibid.* for "G.-G. in C."

5. Substituted by *ibid.* for "I. o. G."

6. This Act has been repealed and re-enacted by the Bihar and Ori Municipal Act, 1922 (B. & O. Act VII of 1922).

(Sec. 3)

Definitions
3. In this Act, unless there is something repugnant in the subject or context,—

(1) "agricultural year" means the year commencing on the first day of *Baisakh* of the Oriya year :

Provided that the first agricultural year shall be deemed to commence on the first day of *Baisakh* following the date of the commencement of this Act ;

(2) "bazyafidlar" means a person holding lands the title to hold which upon special terms was declared invalid by the Cuttack Land-revenue Assessors¹ or the Bengal Revenue Assessors² have been assessed, in a rent fixed for the term of that settlement ; and includes also the successors in interest of such a person ;

(3) "chandnadar" means a person holding land which has been recorded as *chandna* in the course of a settlement of land-revenue, and for which a rent has been fixed for the term of that settlement ; and includes also the successors in interest of such a person ;

(4) "Collector," in any provision of this Act means the Collector of a district, and includes also—

(a) any Revenue Officer or Deputy Collector who is specially empowered by the [Provincial Government]³ to discharge any of the functions of a Collector under that provision, and

(b) any Deputy Collector to whom the Collector may, by general or special order approved by the Commissioner,⁴ transfer any of his functions under that provision, other than functions covered by section 204;

(5) "Commissioner" means the Commissioner of the Orissa Division,⁵ and includes also any other person specially empowered by the [Provincial Government]³ to discharge the functions of the Commissioner in any particular area ;

(6) "Deputy Collector" includes an Assistant Collector and [a Sub-Deputy Collector]⁶ ;

(7) "estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force

1. Printed in Vol. I of this Code.

2.

Orissa
colonial

4.

Act IV
by the
under t

XIII of 1805.
II of 1819.
XIV of 1825.

(Sec. 3)

by the Collector of a district; and includes Government khas-mahals and revenue-free lands not entered in any register; and includes also the sub-proprietary interests referred to in clause (20);

(8) "holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy;

(9) "landlord" means a person immediately under whom a tenant holds, and includes the [Crown]¹;

(10) "pay", "payable" and "payment" used with reference to rent, include "deliver", "deliverable" and "delivery";

(11) "Permanent Settlement" means the Permanent Settlement of portions of Orissa, made in the year 1793 and in subsequent years;

(12) "permanent tenure" means a tenure which is heritable and which is not held for a limited time;

(13) "prescribed" means prescribed by the [Provincial Government]² by notification in the [Official Gazette]³;

(14) "proprietor" means a person owning whether in trust or for his own benefit, an estate or a part of an estate; and includes also the sub-proprietary interests referred to in clause (21);

(15) "registered" means registered under any Act for the time being in force for the registration of documents;

(16) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant; and

for the purposes of sections 62 to 77 and 82 to 85, Chapter XIII, Chapter XVI and Schedule III, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent;

(17) "Revenue Court" means any Court (other than a Civil Court) having jurisdiction under this Act to entertain suits or other proceedings;

(18) "Revenue Officer", in any provision of this Act, means any officer whom the [Provincial Government]² may appoint to discharge any of the functions of a Revenue Officer under that provision;

(19) "signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to;

(20) "sub-proprietary interest" means the interest of a sub-proprietor;

(21) "sub-proprietor" means a person who, in the course of a settlement of land-revenue, has executed an engagement for the

1. Substituted by the A.O. for "Government".

2. Substituted by *ibid.* for "L.G."

3. Substituted by *ibid.* for "I.O.G."

(Sec. 4)

payment of his land-revenue through a proprietor or another sub-proprietor ; and includes also—

(i) persons holding lands the title to hold which for a payment fixed in perpetuity was declared valid by the Cuttack Land-revenue Regulation, 1805,¹ and

(ii) the successors in interest of any person as aforesaid ;

(22) "succession" includes both intestate and testamentary succession ;

(23) "tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person ;

(24) "tenure" means the interest of a tenure-holder or an under-tenure-holder ; and

(25) "village" means the area defined, surveyed and recorded as a distinct and separate village in—

(a) the general land-revenue survey, which has been made of the Province of Bengal, or

(b) any survey made by the Government which may be adopted by notification in the [official Gazette]² as defining villages for the purposes of this clause, in any specified area ;

and, where a survey has not been made by, or under the authority of, the Government, "village" means such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village.

CHAPTER II

CLASSES OF TENANTS

4 There shall be, for the purpose of this Act, the following classes of tenants, namely :—

- (1) tenure-holders, including under-tenure-holders,
- (2) raiyats,
- (3) under-raiyats, that is to say, tenants holding, whether immediately, or mediately, under raiyats, and
- (4) chandnadaras;

1. Printed in Vol. I of this Code.

2. Substituted by the A. O. for "I.O.G."

and the following classes of raiyats, namely :—

- (a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
- (b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and
- (c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor, or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

Meaning of
"tenure-
holder" an
"raiyat".

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of person who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat, unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

- (a) local custom, and
- (b) the purpose for which the right of tenancy was originally acquired.

Explanation.—In ascertaining the purpose for which the right of tenancy was originally acquired, the Court may have regard to the subsequent conduct of the parties.

(5) Where the area held by a tenant exceeds thirty-three acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

(Sects. 6-8)

Status of
bazyafidars
and sub-
proprietors.

6. Notwithstanding anything herein before contained—

- (i) every bazyafidars who is recorded, in any record-of-rights finally published under Chapter XI or under any other law for the time being in force, as a bazyafidars tenure holder, and his successors in interest, shall be deemed to be a tenure-holder for all the purposes of this Act;
- (ii) every bazyafidars who is recorded in any such record-of-rights as a bazyafidars raiyat, and his successors in interest, shall be deemed to be [a raiyat for the purposes of this Act]¹; and
- (iii) every sub-proprietor shall be deemed to be a tenure-holder for the purposes of sections 14 to 20, 99, 100, and Chapter XVI, and to be a permanent tenure-holder for the purposes of section 74.

CHAPTER III

TENURE-HOLDERS

Enhancement of rent

Tenure in a
permanently
settled area,
held since
Permanent
Settlement,
liable to
enhance-
ment only
in certain
cases.

7. Where a tenure in a permanently-settled area has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement, except on proof—

- (a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or
- (b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Limits of
enhance-
ment of rent
of tenures.

8. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

1. Substituted by the Orissa Tenancy (Amendment) Act, 1938 (Orissa Act VIII of 1938), s. 2, for "a tenure-holder for the purposes of sections 14 to 20 and 99, and a raiyat for the purposes of all other sections of this Act".

(Secs. 9-11)

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten *per centum* of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

- (a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and
- (b) the improvements (if any) made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

9. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Power to order gradual enhancement.

10. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Rent once enhanced may not be altered for fifteen years.

-Other incidents of tenures

11. A holder of a permanent tenure shall not be ejected by his landlord, except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Permanent tenure.

Provided that, where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

(Secs. 12-15)

Transfer and
transmis-
sion of
permanent
tenure.

Saving as to
resumable
and non-
transferable
tenures.

Transfer of
tenure by
succession.

Right of
certain
tenure-
holders to
transfer
without
consent of
landlord.

12. (1) Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

13. Nothing in section 11 or in section 12 shall affect the right of the landlord to resume a resumable tenure, or shall validate the transfer of a tenure or portion thereof which, by the terms upon which it is held or by local custom, is not transferable.

14. (1) In the case of every transfer of a tenure or portion of a tenure by succession, the landlord shall recognise the transfer, provided that the transferee shall pay him a fee amounting to rupees two, except in the case of a *bazyaftidar* when the fee shall be rupee one.

(2) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his heir may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the applicant is the successor or not; and, if satisfied that such applicant is the successor, he shall cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

(3) If an application for the registration of the transfer of a tenure or portion thereof under sub-section (1) is not made within a period of six months from the date of the transfer, and if the registration fee authorised by the said sub-section is not deposited along with the application, the transferee or his heir shall not be entitled to recover at any time after the expiry of the said period, by suit or other proceeding, any rent which may have become due to him, as the owner of such tenure or portion, between the date of the transfer and the date of the application for registration.

15. (1) The following classes of tenure holders are entitled to transfer their tenures or portions thereof by sale, gift or exchange without the consent of their landlords :—

(a) sub-proprietors other than *sarbarahkars*,

(b) persons holding land which has been recorded at a settlement of land-revenue as *shikmi kharida* or *kharida jamabandi*, and

(c) *bazyaftidars* :

Provided that a fee of rupees five shall be paid to the landlord in respect of the registration of such tenure or portion, except in the case of a *bazyaftidar*, when the fee shall be rupees two.

(Sec. 16)

(2) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor in interest may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector shall thereupon cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

(3) If an application for the registration of the transfer of any tenure or portion thereof under sub-section (1) is not made within a period of six months from the date of the transfer, and if the registration fee authorised by the said sub-section is not deposited along with the application, the transferee or his successor in interest shall not be entitled to recover, at any time after the expiry of the said period, by suit or other proceeding, any rent which may have become due to him as the owner of such tenure or portion, between the date of the transfer and the date of the application for registration.

16. (1) In cases other than those covered by section 15, when any tenure or portion of a tenure is transferred by sale, gift or exchange, the transferee or his successor in interest shall apply to the landlord to whom the rent of the tenure or portion thereof is payable for registration of the transfer, and the landlord shall, in the absence of good and sufficient reason to the contrary, allow the registration of the transfer. The fee payable on such transfer shall be—

(a) in the case of a sale, rupees twenty-five per centum of the consideration money, or the fee specified in clause (b), whichever is greater, and

(b) in the case of gift or exchange, a fee six times the annual rental of the tenure or portion thereof, as the case may be, or, if rent be not payable in respect of the tenure or portion, then a fee of rupees ten.

(2) If, in any such case, the landlord accepts the fee authorized by sub-section (1), his consent to the transfer shall be deemed to have been given.

(3) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor in interest may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the tenure is transferable by custom without the consent of the landlord and whether the landlord has any good and sufficient reason to refuse his consent to the transfer; and, if the Collector finds that the tenure is so transferable, and that the landlord has no good and sufficient reason to refuse his consent to the transfer, he shall cause the said fee to be delivered to the landlord in the

Transfer
other case

expulsion of that period, a settled Rajya of that village.
under a lease or otherwise, shall be deemed to have, become, on, the
continuously hold as a Rajya land situated in any village, whether
whole or partly before or after the commencement of this Act, has
been held for a period of twelve years whether
Debtors.

(2) Every person who, for a period of twelve years has
whole or partly before or after the commencement of this Act, has
continuously held as a Rajya land situated in any village, whether
whole or partly before or after the commencement of this Act, has
previously acquired, incurred or accrued in reference to such area
Muicipal Act, 1884, shall not affect any right, obligation or liability
an area which is constituted a Municipality under the Bengal
notification under section 1, of any area or part of
(2) The exclusion from the operation of this Act, by a
comes into force, have a right of occupancy in that land.

(22.) Every tenant who immediately before the commencement
of this Act has, by the operation of any enactment, by custom or
otherwise, a right of occupancy in any land, shall, when this Act
comes into force, have a right of occupancy in that land.

General

DEFINITIONS

CHAPTER V

(6) Nothing in this section shall affect the right of the landlord
to resume a resumable holding, or validate the transfer of a holding
by portion thereof, by the terms upon which it is held or by
local custom, is not transferable.

(6) shall not be effected by his landlord,
ground that he has broken a condition consistent with
terms of a contract between him and his landlord,
this Act, and on breach of which he is, under the
habit to be effected.

(a) shall be subject to the same provisions with respect to
the transfer of, and succession to, his holding as the
holder of a permanent tenue, and

21. (1) A Rajya holding at a rent, or rate of rent, fixed in
perpetuity—
holding at
fixed rates.

RATES HOLDING AT FIXED RATES

CHAPTER IV

(Secs. 21-23)

(Secs. 21-23)

CHAPTER IV

RAIYATS HOLDING AT FIXED RATES

21. (1) A raiyat holding at a rent, or rate of rent, fixed in perpetuity—Incidents of holding at fixed rates.

- (a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and
- (b) shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

(2) Nothing in this section shall affect the right of the landlord to resume a resumable holding, or validate the transfer of a holding or portion thereof which, by the terms upon which it is held or by local custom, is not transferable.

CHAPTER V

OCCUPANCY-RAIYATS

General

22. (1) Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.

Cont' of existing occupancy rights.

(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section 1, of any area or part of an area which is constituted a Municipality under the Bengal Municipal Act, 1884,¹ shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area or part.

Ben. Act
III of 1884.

23. (1) Every person who, for a period of twelve years whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

Definition "settled raiyat".

¹. This Act has been repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922).

expatriation of that period, a settled rayat of that village.
under a lease or otherwise, shall be deemed to have, become, on the
continuance held as a rayat and come in any village, whether
whole or partly before the commencement of this Act, has
Debtors definition.

(2) Every person who, for a period of twelve years whether
previously acquired, incurred or accrued in reference to such area
Bundespal Act, 1884, shall not affect any right, obligation or liability
an area which is constituted a Municipality under the Bengal
notification under section (g) of section I, of any area or part of
(2) The exclusion from the operation of this Act, by a
comes into force, have a right of occupancy in that land,
otherwise, a right of occupancy in any land, shall, when this Act
of this Act, by the operation of any enactment, by custom or
Continuing

(1) Every rayat who immediately before the commencement
of this Act has, by the operation of any enactment of
of part.

General

Occupancy-Rights

CHAPTER V

(2) Nothing in this section shall affect the right of the landlord
to resume a resumable holding, or validate the transfer of a holding
or portion thereof, by the terms upon which it is held or by
local custom, is not transferable.

(3) Nothing in this section shall affect the right of the landlord
to resume a resumable holding, or validate the transfer of a holding
in the terms of a contract between him and his landlord,
this Act, and on break of which he is, under the
ground that he has broken a condition consistent with
the liable to be effected.

(4) shall be subject to the same provisions with respect to
the transfer of, and succession to, his holding as those
holder of a permanent tenure, and

(5) shall be subject to the same provisions with respect to
perpetuity.

21. (1) A rayat holding at a rent, or ratio of rent, fixed in tenancies of
holding at fixed rates.

TENANCIES HOLDING AT FIXED RATES

CHAPTER IV

(Sec. 21-23)

(Sects. 21-23)

CHAPTER IV

RAIYATS HOLDING AT FIXED RATES

21. (1) A raiyat holding at a rent, or rate of rent, fixed in perpetuity—
Incidents of holding at fixed rates.

- (a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and
- (b) shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

(2) Nothing in this section shall affect the right of the landlord to resume a resumable holding, or validate the transfer of a holding or portion thereof which, by the terms upon which it is held or by local custom, is not transferable.

CHAPTER V

OCCUPANCY-RAIYATS

General

22. (1) Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.
of existing occupant rights.

Bengal
Act
III of 1884.

(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section 1, of any area or part of an area which is constituted a Municipality under the Bengal Municipal Act, 1884,¹ shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area or part.

23. (1) Every person who, for a period of twelve years whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.
Definition "settled raiyat".

1. This Act has been repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922).

(Secs. 17-20)

prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

(4) If an application for the registration of the transfer of any tenure or portion thereof under sub-section (1) is not made within a period of six months from the date of the transfer, and if the registration fee authorized by the said sub-section is not deposited along with the application, the transferee or his successor in interest shall not be entitled to recover, at any time after the expiry of the said period, by suit or other proceeding, any rent which may have become due to him as the owner of such tenure or portion, between the date of the transfer and the date of the application for registration.

Right of
suit in civil
court
regarding
transferabili-
ty.

Effect of
transfer of
portion of a
tenure.

17. No decision of the Collector under section 14, 15 or 16 shall affect the right of the landlord or of the transferee to establish the transferability or otherwise of the tenancy by suit in the Civil Court.

[18. The transfer of a portion of a tenure and the registration of the same under section 14, 15 or 16 shall not be deemed to constitute a division of tenure unless such portion is defined by metes and bounds.

The transferee of such a portion of tenure which is not defined by metes and bounds and the holder of the remainder of such a tenure shall be jointly and severally liable to the landlord for the rent of the entire tenure, unless the landlord has consented in the manner specified in section 99 to a division of tenure or to a distribution of rent thereof.]

Fee on
application
under sec-
tion 14, 15
or 16.

Return of
landlord's
fee

19. An application to the Collector under section 14, 15 [or]² 16 shall be accompanied by such fee, in addition to the fee payable to the landlord, as the [Provincial Government]⁴ may, by rule, direct.

20. If an application under section 14 [or]² 16, * * * be disallowed, the Collector shall return the landlord's fee to the applicant.

^{1.} Substituted by the Orissa Tenancy (Amendment) Act, 1947 (Orissa Act XV of 1947), s. 2 for the original section which read as follows—

"18. The transfer of a portion of a tenure and the registration of the same under section 14, 15 or 16 shall not be deemed to constitute a division of tenure unless such portion is defined by metes and bounds and the holder of the remainder of such a tenure shall be jointly and severally liable to the landlord for the rent of the entire tenure, unless the landlord has consented in the manner specified in section 99 to a division of tenure or to a distribution of rent thereof."

^{2.} Inserted by the Orissa Tenancy (Amendment) Act, 1938 (Orissa Act VIII of 1938), s. 3.

^{3.} The figures, word and letter "31 or 31A" are omitted by *ibid*, s. 3.

^{4.} Substituted by the A. O. for "L. G."

(Secs. 21-23)

CHAPTER IV

RAIYATS HOLDING AT FIXED RATES

21. (1) A raiyat holding at a rent, or rate of rent, fixed in perpetuity—Incidents of holding at fixed rates.

- (a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and
- (b) shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

(2) Nothing in this section shall affect the right of the landlord to resume a resumable holding, or validate the transfer of a holding or portion thereof which, by the terms upon which it is held or by local custom, is not transferable.

CHAPTER V

OCCUPANCY-RAIYATS

General

22. (1) Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.

*Cont'd
of existing
rights.*

(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section 1, of any area or part of an area which is constituted a Municipality under the Bengal Municipal Act, 1884,¹ shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area or part.

23. (1) Every person who, for a period of twelve years whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

*Definition
"settled
raiyat".*

1. This Act has been repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922).

(Secs. 24-25)

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village, notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under section 98, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been out of possession more than a year.

(7) If, in any suit or other proceeding under this Act, or under any other law, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as raiyat.

Settled
raiylats
to have
occupancy
rights.

24. (1) Every person who is a settled raiyat of a village within the meaning of section 23 shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(2) Every person who, being a settled raiyat of a village within the meaning of section 23, held land as a raiyat in that village at any time between the tenth day of September, 1891, and the commencement of this Act shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

Acquisition
of occupancy
rights in an
area not
included in
a village

25. (1) Every raiyat who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in an area which is not included in a village as defined in clause (25) of section 3, shall be deemed to have become an occupancy-raiyat in respect of that land.

(2) The holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat within the meaning of this section.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be held to affect the terms of any written contract for the cultivation of land in the aforesaid area, entered into between a landholder and a raiyat, when it contains any express stipulation contrary thereto.

(Sects. 26-27A)

26. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, such person shall have no right to hold the land as a tenant, but shall hold it as a proprietor or permanent tenure-holder (as the case may be); but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or permanent tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same.

(3) In determining from time to time what is a fair and equitable sum under sub-section (2), regard shall be had to the rent payable by the occupancy-raiyat at the time of the transfer and to the principles of this Act regulating the enhancement or reduction of the rents of occupancy-raiyats.

(4) A person interested in any estate, tenure, village or land, whether solely or jointly with others, as a temporary tenure-holder, *ijadar* or farmer of rents, or as a mortgagee in possession, shall not, during the period of his lease or mortgage, acquire by purchase or otherwise a right of occupancy in any land comprised in his lease or mortgage.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as a proprietor or permanent tenure-holder, or by subsequently holding the land as a temporary tenure-holder, *ijadar* or farmer of rents, or mortgagee.

Incidents of occupancy-right

27. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; * * *

Rights of
raiyat in
respect of
use of land.

[27 A. Notwithstanding anything contained in section 27 when

Specific
rights of an
occupancy
raiyat.

1. The words "but shall not be entitled to cut down trees in contravention by the Orissa Tenancy (Amendment) Act,

(Secs. 28-30A)

a raiyat has a right of occupancy in respect of any land, he shall be entitled—

- (i) to plant,
- (ii) to enjoy the flowers, fruits and other products of,
- (iii) to fell, and
- (iv) to utilize or dispose of the timber of,

any tree on such land, and any such act shall not render him liable to ejectment under section 29 of this Act :

Provided that where there is a specific entry in favour of the landlord in the last record-of-rights published before the commencement of the Orissa Tenancy (Amendment) Act, 1938, regarding any tree now standing on any occupancy holding, the right of the landlord in such tree shall be in accordance with such entry or with any decision of a Civil Court affecting such entry, notwithstanding anything to the contrary contained in this section :

Provided further that it shall be open to a raiyat, on payment to the landlord of such compensation as may be fixed by the Collector, on an application made to him in that behalf, to acquire the rights reserved to a landlord as aforesaid.}

Obligation
of raiyat to
pay rent.

Protection
from
eviction
except on
specified
grounds.

28. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

29. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

30. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property :

Provided that, in any case in which, under the law of inheritance to which the raiyat is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

30 A. (1) The occupancy holding of a raiyat, or a portion or share thereof, shall be transferable by sale, exchange, gift or bequest without the landlord's consent and without payment of any fee to him. Such transfer shall carry with it the occupancy right in the holding and all the rights appurtenant thereto.

1. Inserted by the Orissa Tenancy (Amendment) Act, 1938 (Orissa Act VIII of 1938), s. 6.

(Sec. 31)

(2) An occupancy raiyat may sub-let or mortgage his holding or a portion or share thereof without his landlord's consent.]

¹[31. (1) Every transfer of an occupancy holding, or a portion or share thereof whether by sale, exchange or gift shall be made by registered instrument except in the case of a sale in execution of a decree or of a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914 :

Manner of transfer and notice to landlord.

Provided that the Provincial Government may exclude², from the operation of this sub-section, any class of transfer of occupancy holdings in any Government estate of which rent is payable direct to Government, and may make rules² for carrying out the purposes of this section in such estates and prescribe fines or penalties for the infringement of such rules :

Provided further that nothing in this section shall be deemed to affect the provisions of the Muhammadan law relating to gifts, and in such cases of transfer the rules made under the first proviso shall have effect.

(2) A registering officer shall not accept for registration any such instrument unless the rent of each holding or a portion or share thereof is stated separately in the instrument and unless it is accompanied by a notice signed by the transferer and the transferee giving particulars of the transfer in the prescribed form and the fee prescribed for the service of such notice on the landlord.

(3) When any such instrument is admitted to registration, the registering officer shall transmit the notice to the Collector who shall cause it to be served on the landlord named in the notice in the prescribed manner :

Provided that when a sole landlord purchases a holding or a portion or share thereof no notice need to be served.

(4) In the case of a transfer of an occupancy holding or a portion or share thereof by bequest, the Court shall, before granting probate or letters of administration, require the applicant to file a notice giving particulars of the transfer in the prescribed form accompanied with the prescribed fee for the service of the notice on the landlord. When probate or letters of administration have been granted, the Court shall transfer the notice to the Collector who shall cause it to be served on the landlord named in the notice in the prescribed manner.

1. Substituted by the Orissa Tenancy (Amendment) Act, 1938 (Orissa Act VIII of 1938), s. 7, for the original s. 31.

2. For notifications issued under this proviso, see Orissa L. S. R. & O., Vol. I, pt. VII.

(Sec. 31A)

(5) When the holding of an occupancy raiyat or a portion or share thereof is sold in execution of a decree or of a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914, other than a decree or certificate for arrears of rent due in respect of the holding or dues recoverable as such, and neither the purchaser nor the decree holder is the sole landlord, the Court or the Revenue Officer, as the case may be, shall, before confirming the sale, require the purchaser to file a notice giving particulars of the transfer in the prescribed form and to deposit a fee of the prescribed amount for the service of it. When the sale has been confirmed, the Court or the Revenue Officer shall transmit the notice to the Collector who shall cause it to be served on the landlord in the prescribed manner.

(6) When a mortgage of a holding of an occupancy raiyat or of a portion or share thereof is foreclosed and the decree-holder is not himself the sole landlord, the Court shall before making a decree or order absolute for the foreclosure, require the mortgagor to file a notice giving particulars of the transfer in the prescribed form and to deposit fee of the prescribed amount for the services of it. When the decree or order for foreclosure has been made absolute, the Court shall transmit the notice to the Collector who shall cause it to be served on the landlord in the prescribed manner.

[^{B.} (6A) Notwithstanding anything contained in the preceding provisions of this section, in any case of transfer of an occupancy holding or a portion or share thereof in a Government estate, of which rent is payable direct to Government, the notices referred to in sub-sections (2) to (6) shall not be required to be accompanied by any fee for the service of such notices on the landlord and need not be served by the Collector on the Provincial Government as landlord.]

(7) Nothing in this section shall bar any suit in a Civil Court for establishing or setting aside a transfer.]

²[31A. (1) In the case of a transfer of a portion or share of an occupancy holding by sale, exchange, gift or bequest which is not defined by metes and bounds, the transferees and the persons possessing interest in the remainder of the holding shall be considered as joint tenants by the landlord.

(2) In case the transfer is by sale, exchange, gift or bequest and is of a portion of an occupancy holding and the portion is all be deemed to agree of rent as set forth in in six months of the date him to the Collector for Collector shall, on such application by the landlord or by any other person within such period, hold an enquiry in the prescribed manner and order a distribution of rent which is fair and equitable.]

^{1.} Inserted by the Orissa Tenancy (Amendment) Act, 1944 (Orissa Act III of 1944), s. 2. It shall be deemed to have come into force on 23rd November, 1943, see s. 2 thereof.

(Secs. 31B-34)

¹(31 B. (1) Notwithstanding anything contained in this Act, any transferee, who obtained a transfer of an occupancy holding or a portion or a share thereof, before the commencement of the Orissa Tenancy (Amendment) Act, 1938, shall be liable to pay the fees lawfully payable by him at the time of the transfer, within [four years]² from the coming into force of that Act or the date of the landlord's knowledge of the transfer whichever is later, but he shall not be liable to ejection on the ground that the landlord has not given his consent to the transfer.

Payment of fees for transfer of occupancy holding made before the commencement of the Orissa Tenancy (Amendment) Act, 1938.

(2) The holding or a portion or a share thereof shall not be liable to be sold in satisfaction of the decree for arrears of rent without making the said transferee a party to the proceedings in execution of the decree provided that the transferee has given notice of transfer by registered post to the landlord.

Explanation.—Notwithstanding anything contained in this Act or in the Code of Civil Procedure, in the case of a transfer of a holding or a portion or a share thereof, whether before or after the decree the transferee may be brought on record in the proceedings in execution either in substitution of or in addition to the judgment-debtor, and such transferee shall, when so added or substituted, be treated as a judgment-debtor for all purposes of the said proceedings in execution of the decree.]

Enhancement of rent

32. The rent for the time being payable by an occupancy-riayat shall be presumed to be fair and equitable until the contrary is proved.

Pres.
as to fair
and equit-
able rent.

33. Where an occupancy-riayat pays his rent in money, his rent shall not be enhanced, except as provided by this Act.

Restriction
on enhance-
ment of
money-
rents.

34. The money-rent of an occupancy-riayat may be enhanced by contract, subject to the following conditions :—

Enhance-
ment of
by c'.

(a) the contract must be in writing and registered;

(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the riayat;

(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract ;

1. Substituted by the Orissa Tenancy (Amendment) Act, 1938 (Orissa Act VIII of 1938), s. 8.

2. Substituted by the Orissa Tenancy (Second Amendment) Act, 1944 (Orissa Act IV of 1944), s. 2, for "three years". (This amendment shall have retrospective effect on and from 1st Nov, 1938, see s. 4, *ibid*).

(Sec. 35)

Provided as follows :—

- (i) nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed ;
- (ii) nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled ; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding ;
- (iii) when a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

Enhancement of rent
by suit.

35. The landlord of a holding held at a money-rent by an occupancy-raiyan may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely :—

- (a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate ;
- (b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent ;
- (c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent ;
- (d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—“Fluvial action” includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

(Secs. 36-37)

36. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate,—

- (a) in determining what is the prevailing rate, the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court ;
- (b) if, in the opinion of the Court, the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry the Court may direct that a local inquiry be held under Order XXVI in the first Schedule to the Code of Civil Procedure, 1908, by such Revenue-officer as the [Provincial Government]¹ may authorize in that behalf by rule made under rule 9 in the said Order ;
- (c) in determining under this section the rate of rent payable by a raiyat, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate ; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom ;
- (d) in ascertaining the prevailing rate of rent, the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration ;
- (e) if a favourable rate has been determined under clause (c) for any description of raiyats, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate ;
- (f) if the holding is held at a lump rental, the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.

37. In any district or part of a district to which this section is extended by the [Provincial Government]¹ by notification in the [official Gazette]², whenever the prevailing rate for any class of land is

of those lands is held may be taken to be the prevailing rate

1. Substituted by the A. O., for "L. O."

2. Substituted by *ibid*, for "L. O."

Rules as to
enhance-
ment on
grounds of
prevailing
rate.

What may
be taken as
the prevailing
rate.

(Sects. 38-39)

Illustrations

(a) The rates at which land of a similar description and with similar advantages is held in a village are as follows :—

Acres	Rs. A. P.
100	... @ 1 0 0
200	... @ 1 8 0
150	... @ 1 12 0
100	... @ 2 0 0
150	... @ 2 4 0
Total ... <u>700</u>	... less than

(b) The rates at which land of a similar description and with similar advantages is held in a village are as follows :—

Acres	Rs. A. P.
100	... @ 1 0 0
250	... @ 1 4 0
150	... @ 1 8 0
150	... @ 1 12 0
50	... @ 2 0 0
Total ... <u>700</u>	... neither Rs. 2 nor Re. 1-12 is the rate, because only 350 acres are held higher than Re. 1-8. In this case more than half the lands are held at Re. 1-4 or higher rates, and this is the maximum rate at which, and at rates higher than which, more than half the land is held.

38. When the prevailing rate has once been determined by a Revenue-officer under Chapter XI or by a Revenue Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in section 35, clause (b) and section 39.

Limit to enhancement of prevailing rate.

Rules as to enhancement on ground of rise in prices.

39. Where an enhancement is claimed on the ground of a rise in prices,—

(a) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison;

(b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison :

(Secs. 40-43)

Provided that, in calculating this proportion, the average prices during the later period shall be reduced by one third of their excess over the average prices during the earlier period;

(c) if, in the opinion of the Court, it is not practicable to take the decennial periods prescribed in clause (a), the court may, in its discretion, substitute any shorter periods therefor.

40. (1) Where an enhancement is claimed on the ground of a landlord's improvement,—

(a) the Court shall not grant an enhancement, unless the improvement has been registered in accordance with this Act;

(b) in determining the amount of enhancement, the court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent, and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

41. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action,—

(a) the Court shall not take into account any increase which is merely temporary or casual;

(b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Rules as to enhancement on ground of landlord's improvement.

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

In the following sections, the rent which is under

Enhancement by suit to be fair and equitable.

Power to order progressive enhancement.

43. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decree has been reached.

(Secs. 44-46)

Limitation
of right to
bring
successive
enhance-
ment suits.

44. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the tenth day of September, 1891, or if within the said period of fifteen years the rent has been commuted under section 47 or a decree has been passed by this Act enhancing the any ground corresponding s.

(2) Nothing in this section shall affect the provisions of rule 1 in Order XXIII in the first Schedule to the Code of Civil Procedure, 1908. v of

Reduction of rent

Reduction
of rent.

45. (1) An occupancy-riayat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, namely :—

(a) on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

Price-lists

Price-lists
of staple
food-crops.

46 (1) The Collector of every district shall prepare, monthly or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the [Provincial Government]¹ may direct, and shall submit them to the [Board of Revenue]² for approval or revision.

(2) The Collector [Government]¹, prepare for any past times as the [Provi] shall submit the lists so prepared to the [Board of Revenue]² for approval or revision.

1. Substituted by the A. O. for "L. G."

2. The functions of the Board of Revenue are discharged by the Revenue Commissioner, Orissa (see Orissa, L. S. R. & O., Vol. I, pt. I).

(Sec. 47)

(3) The Collector shall, one month before submitting a price-list to the [Board of Revenue]¹ under this section, publish it in the prescribed manner within the local area to which it relates ; and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the [Board of Revenue]¹ with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the [Official Gazette]²; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the [Board of Revenue].

(5) The [Provincial Government]³ shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the [Official Gazette]².

(6) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the commencement of this Act are correct, and may presume that the prices shown in the lists prepared for any year prior to the commencement of this Act are correct, unless and until it is proved that they are incorrect.

(7) The [Provincial Government]³ * * *⁴ shall make rules for determining what are to be deemed staple food-crops in any local area, and for the guidance of officers preparing price-lists under this section.

Commutation

47. (1) Where an occupancy-riayat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in cash, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

Commuta
tion of rent
payable in
kind.

(2) The application may be made to —

(i) the Collector or Subdivisional Officer, or

1. The functions of the Board of Revenue are discharged by the Commissioner, Orissa (see Orissa L. H. R. & O. Ord. I, pt. I).

2. Substituted by the A. O. for L. H. R. Ord. I, pt. I.

(Sec. 47)

(ii) a Revenue丈人 the Provincial Governor or Settlement-officer or for the purpose of making a survey and record of rights under Chapter XI, or

(iii) any other officer specially authorized in this behalf by the [Board of Revenue].²

(3) On the receipt of the application, the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination, the officer shall have regard to—

(a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;

(b) the average value of the rent actually received by the land-lord during the preceding ten years or during any shorter period for which evidence may be available;

(c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges;

(d) improvements effected by the landlord or by the occupancy raiyat in respect of the raiyat's holding, and

(e) the rules laid down in section 40 regarding enhancement of rent on the ground of a landlord's improvement.

(5) The order shall be in writing, and shall state the grounds on which it is made and the time from which it is to take effect.

(6) If the application is opposed, the officer shall decide whether, in all the circumstances of the case, it is reasonable to grant it, and in cases in which—

(i) the landlord is, by physical or caste disability or on account of sex, unable to cultivate personally and is dependent for livelihood upon the share of the produce payable as rent, or

1. Substituted by the A. O. for "L. G."

2. Substituted by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act III of 1916) for "L. G."

The functions of the Board of Revenue are discharged by the Revenue Commissioner, Orissa (see Orissa L. S. R. & O., Vol. I, pt. I).

(Sects. 48-52)

(ii) the land has been assigned to a religious or charitable endowment and the share of the produce payable as rent is applied for the purposes of such endowment,

he shall, and in other cases he may, take into consideration the effect of commutation on the income of the landlord.

(7) If the officer refuses the application he shall record in writing his reasons for the refusal.

(8) All orders passed under this section, including an order refusing an application, shall be subject to appeal in the prescribed manner and to the prescribed officer.

48. (1) Where the rent of a holding has been commuted under section 47, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 45.

Period for
which com-
muted
are to
remain
unaltered.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (5) of section 47.

CHAPTER VI

NON-OCCUPANCY-RAIYATS

49. This Chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

Application
of Chapter.

50. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Initial rent
of non-
occupancy-
raiyat.

51. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 53 :

Conditions
of enhance-
ment of.

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

52. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely :—

Grounds on
which non-
occupancy-
raiyat may
be ejected.

(a) on the ground that he has failed to pay an arrear of rent ;

(b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;

(Sec. 53)

- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 53, or that the term for which he is entitled to hold at such a rent has expired.

*Conditions
of ejectment
on ground of
refusal to
agree to en-
hancement.*

53. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-riayat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring this section may file it in [Provincial Government]¹ raiyat. The Court or officer shall ~~sorinwari causa~~ ~~to be served on~~ serve on the raiyat in the prescribed manner; and, when it has been so served, it shall, for the purposes of this section, be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), he shall be deemed to have refused to execute it.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall pay that rent for a period, but on the understanding that the raiyat under the conditions of his tenancy has a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined the Court shall pass a decree for ejectment.

1. Substituted by the A. O. for "L. G."

(Sects 54-55)

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

54. Where a raiyat has been in occupation of land, and a lease is executed with a view to continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

CHAPTER VII

LANDS EXEMPTED FROM CHAPTERS V AND VI

55. Notwithstanding anything contained in Chapter V, a right of occupancy shall not be acquired in, nor shall anything contained in Chapter VI apply to,—

(a) a proprietor's private lands, when they are held by a tenant on a lease for a term of years or on a lease from year to year,

(b) land acquired under the Land Acquisition Act, 1894,¹ for [any Government]² or any Local Authority or Railway Company, or land belonging to [the Crown]³ within a cantonment, while such land remains the property of [the Crown]³ or of any Local Authority or Railway Company, or

(c) land recorded or demarcated as belonging to [the Crown]³ or to any Local Authority which is used for any public work, such as a road, canal or embankment, or is required for the repair or maintenance of the same, while such land continues to be so used or required.

Bar to acquisition of right of occupancy in and to application of Chapter VI to, proprietor's private and other'

1. Printed in Central Acts, Vol. III, p. 483.

2. Substituted by the A. O., for "the Government".

3. Substituted by *ibid*, for "the Government".

(Sects. 56-58)

CHAPTER VIII

UNDER-RAIYATS

Limit of rent recoverable from under- raiyats.

56. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely:—

(a) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty *per cent*; and

(b) in any other case—twenty-five *per cent*:

Provided that, if the landlord be a *bazayastidar*, the said percentages shall be calculated with reference to the average of cash rent which is paid by occupancy-raiyats for similar land in the village, and not with reference to the rent which the *bazayastidar* himself pays.

Restriction on ejectionment of under- raiyats.

57. An under-raiyat shall not be liable to be ejected by his landlord, except:—

(a) on the expiration of the term of a written lease; or

(b) when holding otherwise than under a written lease, at the end of the agricultural year within which a notice to quit has been served upon him by his landlord, provided that such notice has been served upon him not less than six months before the end of the year.

CHAPTER IX

GENERAL PROVISIONS AS TO RENT

¹⁷⁰*Rules and presumptions as to amount of rent*

Rules and presump- tions as to fixity of rent.

58. (1) Where a tenure-holder or raiyat in a permanently-settled area, and his predecessors in interest, have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act or under any other law that either a tenure-holder or raiyat and his predecessors in interest have held land situated in a permanently-settled area at a rent or rate of rent which has not been changed

(Sects. 59-60)

during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement :

Provided that, if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class, in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

59. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Presumption
as to
amount of
rent and
conditions of
holding.

Alteration of rent on alteration of area

60. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which, having previously belonged to the tenure or holding, was lost by diluvion or otherwise without any reduction of the rent being made ; and

Alteration of
rent in re-
spect of
alteration in
area.

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(Sec. 61)

- (a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area; and
- (d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure; and shall not in any case fix any rent which, in the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof; or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

(5) When, in a suit under this section, the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding, exclusive of such excess area.

(6) When, in a suit under this section, the landlord or tenant proves that, at the time the measurement on which the claim is based was made, there existed, in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situate, a practice of settlement being made after measurement of the land assessed with rent, it may be presumed that the area of the tenure or holding specified in any lease or counterpart engagement, or (where there is an entry of area in a countersigned receipt corresponding to the entry in the rent-roll) in any rent-roll relating to it, has been entered in such lease, counterpart engagement or rent-roll after measurement.

61. (1) No waste land may be reclaimed by a raiyat without the written consent of his landlord except where the land was, before such reclamation, included in the tenancy of the raiyat and he has acquired a right of occupancy in it.

(Secs. 62-64)

(2) Where the consent of the landlord is required by sub-section (1) for the reclamation of waste land, such consent shall be deemed to have been given if, within four years from the date on which the raiyat commenced his reclamation of the land, the landlord has not made an application to the Collector for his ejectment:

Provided that this sub-section shall not apply to waste land which is not included in a village as defined in clause (25) of section 3.

(3) Waste land which has been reclaimed under sub-section (1) or sub-section (2) shall be assessable to rent according to the terms of any agreement entered into by the parties before or after the reclamation. In the absence of any such agreement, the Collector may, on the application of either of the parties, settle a fair and equitable rent for the land, and, in doing so, shall have regard to—

- (i) the provisions of section 60, and
- (ii) any local usage or arrangement between the parties which is, in his opinion, fair and equitable.

Payment of Rent

62. (1) Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in two equal instalments falling due on the last day of each half of the agricultural year. Instalments of rent.

(2) Subject to agreement or established usage, a produce-rent payable by a tenant shall be payable at the time of harvest, and shall be deemed to have fallen due on the last day of the Oriya month during which the crop is harvested.

63. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due. Time and place for payment of rent.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the [Provincial Government]¹ may make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

64. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be accordingly.

1. Substituted by the A. O., for "L. G."

(Secs. 65-67)

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Receipts and Accounts

Tenant making payment to his landlord entitled to a receipt.

65. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipts.

such of the several schedule II as can

Provided that the [Board of Revenue]¹ may prescribe or sanction a modified form, either generally or for any particular local area or class of cases.

particulars required contrary is shown, up to the date on which the receipt was given.

Tenant entitled to full discharge or statement of account at close of year.

66. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account specifying the several particulars shown in the form of account given in Schedule II or in such other form as may be prescribed by the [Board of Revenue]¹, either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Penalties and fine for withholding receipts and statements of account and failing to keep counter parts.

67. (1) If a landlord, without reasonable cause, refuses or neglects to deliver to a tenant a receipt, containing the particulars prescribed by section 65, for any rent paid by the tenant, the landlord, from the date of payment, institute a suit for a penalty, not exceeding double the amount paid, the Court thinks fit.

1. Substituted by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act III of 1916) for "L. G."
The functions of the Board of Revenue are discharged by the Revenue Commissioner, Orissa (see Orissa L. S. R. & O., Vol. I, pt. I.)

(Sec. 67)

(2) If a landlord, without reasonable cause, refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 66, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement, or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3) either on his own motion or on information received from a Revenue officer within one year, or upon complaint of the party aggrieved made within three months from the date of failure, or upon the report of a Civil or Revenue Court made as provided in sub-section (6).

(5) Nothing in sub-sections (3) and (4) shall apply if the tenant has already instituted a suit under sub-section (1) or sub-section (2).

(6) If, in any suit or other proceeding under this Act or under any other law, the Court or presiding officer (not being the Collector) finds that any landlord or agent has failed—

(a) to deliver to a tenant a receipt in the prescribed form, or
 (b) to prepare and retain a counterfoil, in the prescribed form of a receipt delivered to a tenant as aforesaid,
 such Court or officer shall inform the Collector.

(7) Where, in any case instituted under sub-section (1), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent, such compensation, not exceeding fifty rupees, as the Collector thinks fit.

(8) An appeal shall lie to the Collector of the district from any order passed under sub-section (3) or sub-section (7), by an officer subordinate to him, and his order on appeal shall, subject to any order which may be passed by the Commissioner on revision, be final :

Provided that an appeal shall lie to the Commissioner from any order passed by the Collector of the district under sub-section (3) or sub-section (7), and the order of the Commissioner on appeal shall be final.

(Sect. 68-70)

(9) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand¹.

(10) For the purpose of an inquiry under this section, the Collector shall have power to summon, and enforce the attendance of, witnesses, and compel the production of documents, in the same manner as is provided in the case of a Court by the Code of Civil Procedure, 1908.

V of 1903.

¹ Provincial Government to prepare forms of receipt and account.

68. (1) The [Provincial Government]² shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts, with counterfoils, and of statements of account, suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the [Provincial Government]³ thinks fit.

Effect of receipt by registered proprietor, manager, or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876,⁴ as proprietor, manager or mortgagee of that estate,

Bon Act VII of 1876.

and where rent is due to a sub-proprietor or tenure-holder, the receipt of the person who is—

(a) registered under section 14, 15 or 16, or under any law previously in force, as sub-proprietor or tenure-holder, or

(b) recorded as sub-proprietor or tenure-holder in a record-of-rights finally published under Chapter XI or under some other law for the time being in force,

or the receipt of the duly authorized agent of any such person as aforesaid,

shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered or recorded that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee or the registered or recorded sub-proprietor or tenure-holder.

Deposit of rent

70. (1) In ——————
 (a)
 accept it ;
 rent and
 to grant a

¹ Demand
²
³

⁴ see the Bihar and Orissa Public Act of 1914).

(Sec. 71)

- (b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- (c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf; or
- (d) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent;

the tenant may present, to the court having jurisdiction to entertain a suit for the rent of his tenure or holding, an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

- in cases (a) and (b), the name of the person to whose credit the deposit is to be entered,
- in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and
- in case (d) the name of the person to whom the rent was last paid, and of the person or persons now claiming it;

shall be signed and verified, in the manner provided in rules 14 and 15 in Order VI in the first Schedule to the Code of Civil Procedure, 1908 by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant;

and shall be accompanied by a fee of such amount as the [Provincial Government]¹ may, by rule, direct.

(3) The provisions of this section shall not apply to a rent which has not fallen due prior to the date of application for deposit, nor to a tenant who has acquired his tenancy by gift, purchase or exchange, and has not been duly registered under the provisions of section 15 [or]² 16 * * *³.

71. (1) If it appears to the Court to which an application is made under section 70 that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it in the prescribed form.

Receipt
granted by
Court for
rent
deposited
to be a valid
acquittance.

1. Substituted by the A. O., for "L. G."

2. Inserted by the Orissa Tenancy (Amendment) Act, 1938 (Orissa Act VIII of 1938), s. 9.

3. The figures, word and letter "31 or 31A" omitted by *ibid*.

(Secs. 72-73)

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of section 70, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent
is due; and

in case (d) of that section, by the person entitled to the rent.

**'Notification
of receipt of
deposit.**

72. (1) The Court receiving the deposit shall forthwith—

in cases (a) and (b) of section 70, ^cuse a notice of the receipt
of the deposit to be served, free of charge, on the person
specified in the application as the person to whose credit
the deposit was to be entered;

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (d) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

(2) Notices to be served under this section may, at the discretion of the Court, be served by registered post.

**Payment or
refund of
deposit.**

73. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Revenue Court as to the person so entitled.

(2) The payment may, if the [Provincial Government]¹ so directs, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the Court to the contrary, be repaid to and on his returning the receipt given was deposited.

(4) No suit or other proceeding shall be instituted against the [Crown]², or against any officer of the [Crown]³, in respect of anything done by a Court receiving a deposit under the foregoing sections :

1. Substituted by the A. Q. for "L. G."

2. Substituted by the A. U., for "L. G."

2. Substituted by *ibid.* for "Secretary of State".

(Sects. 74-77)

but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Arrears of Rent

74. Where a tenant is a permanent tenure-holder, a *bazayaftidar*, a raiyat holding at fixed rates, a *chandnadar* or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Liability to
sale for
arrears in
case of
permanent
tenure-
holder,
bazayaftidar,
raiyat hold-
ing at fixed
rate, *chand-
nadar* or
occupancy
raiyat.

75. (1) When an arrear of rent remains due at the end of the agricultural year from a tenant not being a permanent tenure-holder, a *bazayaftidar*, a raiyat holding at fixed rates, a *chandnadar* or an occupancy-raiyat, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

Ejectment
for arrears
in other
cases.

(2) In a suit for ejectment for an arrear of rent, a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon; and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may, for special reasons, extend the period of fifteen days mentioned in this section.

76. An arrear of money-rent shall bear simple interest, at the rate of [six]¹ per centum per annum, from the expiration of that half of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit, whichever date is earlier.

Interest on
arrears of
money-rent.

77. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Power to
award
damages on
rent with-
hold without
reasonable
cause, or to
defendant
improperly
rued.

1. Substituted by the Orissa Tenancy (Amendment) Act, 1933 (Orissa Act VIII of 1933), s. 10 for "twelve and a half".

(Sects. 78-79)

Provided that,—

(i) interest shall not be decreed when damages are awarded under this section ; and

(ii) the amount of damages awarded shall in no case be less than the amount of interest recoverable under section 78.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Produce-rents

Recovery of
produce-
rent.

78. (1) Where the rent of any land is paid in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in cash, the landlord shall not be entitled to recover rent for that land in excess of half the gross produce of the land, or the value thereof, or any interest on such rent, or to recover any arrear of such rent by suit, unless such suit is instituted before the end of the agricultural year next following that for which the rent is claimed to be due.

Explanation.—In applying the provisions of this sub-section, the Court shall estimate the value of the produce according to the rates obtaining locally at the time of harvest.

(2) Nothing in this section shall bar a suit for an arrear of rent recoverable under the law hitherto in force, provided that such suit shall be brought before the end of the first agricultural year after the commencement of this Act.

Order for
appraising
or dividing
produce.

79. (1) Where rent is taken by appraisement or division of the produce or is a fixed quantity of the produce—

(a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(b) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(Sects. 80-81)

(2) The Collector may, without such an application, make the like order in any case where, in the opinion of the District or Sub-divisional Magistrate, the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected; but an order made by the Collector under this sub-section shall not prevent the execution of any order passed by the Court for the distraint of the tenant's crops.

(4) Every officer appointed by the Collector under sub-section (1) to appraise or divide the produce shall, for the purposes of the Indian Penal Code, be deemed to be a public servant.

80. (1) When a Collector appoints an officer under section 79 the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made, but if either the landlord or the tenant fails to attend, either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard, and making such inquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Revenue Court; but, subject as aforesaid, his order shall be final and shall, on application to a Revenue Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

81. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

Procedure
where officer
appointed.Rights and
liabilities
of

(Sect. 82-85)

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Liability for rent on change of landlord or after transfer of tenure or holding.

Tenant not liable to transferees of landlord's interest for rent paid to former landlord, without notice of the transfer.

Liability for arrears of rent on transfer.

Illegal exactions.

Penalty.

82. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid in good faith to the landlord whose interest was so transferred, unless the transferee has, before the payment, given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants, published in the prescribed manner, shall be a sufficient notice for the purposes of this section.

[83. When an occupancy holding or a portion or share thereof is transferred and arrears of rent have accrued thereon prior to the date of the transfer, the transferor and the transferee shall be jointly and severally liable to the landlord for such arrears of rent which shall be a first charge on the holding.]

Illegal cesses, etc.

84. All impositions upon a tenant, in addition to or in excess of the rent lawfully payable shall be illegal and all stipulations and reservations for the payment thereof shall be void.]

[85. (1) If any landlord or his agent levies from a tenant anything in money or kind in addition to or in excess of the rent or interest lawfully payable at the time of the transfer,¹ the district or any Deputy Commissioner or any officer appointed by the Provincial Government, by order impose on the landlord or on his agent or on both, as the case may be, such penalty as such officer thinks fit, not exceeding five hundred rupees, or when double the amount or value of what is so levied exceeds five hundred rupees, not exceeding double that amount or value or simple imprisonment for a period not exceeding six months in either case.

1. Substituted by the Orissa Tenancy (Amendment) Act, 1938 (Orissa Act VIII of 1938), s. 11.

2. Substituted by ibid, s. 12.

3. Substituted by ibid, s. 13.

(Sec. 86)

Such office his agent in
the same process all award to
the tenant, by portion of the
penalty as he thinks fit.

(2) if in any other law, that any land Court or officer shall inform the Collector, "ng under this Act or grounds for believing er this section, such

(3) A proceeding under sub-section (1) shall be instituted :—

- (a) upon complaint made by a tenant, or
(b) after the receipt by the Collector of information under sub-section (2) or on the termination of any suit, application or proceedings under this Act or any other law in the course of which the Collector has grounds for believing that the landlord is liable to a penalty under this section :

Provided that all proceedings under this section shall be compoundable.

(4) if any proceedings instituted under this section, the Collector discharges any landlord or his agent, and is satisfied that the complaint or allegation of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to the landlord such compensation not exceeding one hundred rupees as the Collector may think fit.

Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.]

CHAPTER X

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS

Improvements

86. (1) For the purposes of this Act, the term "improvement", used with reference to a holding, means any work or labour which adds value to the holding, and consists of any work or labour not executed on the holding, is either executed directly for its benefit or is, after execution, made directly beneficial to it.

(Sects. 87-89)

(2) Until the contrary is shown, the following shall be presumed to be improvement within the meaning of this section :—

- (a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture ;
- (b) the preparation of land for irrigation ;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable ;
- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;
- (e) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto ; and
- (f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

Right to make improvements in holding. 87. (1) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord, shall as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it unless it affects another holding or other holdings under the same landlord.

Collector to decide question as to right to make improvement.

88. If a question arises between the raiyat and his landlord—

- (a) as to the right to make an improvement, or
- (b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question; and his decision shall be final.

Right to make improvements in case of non-occupancy.

89. (1) A non-occupancy-raiyat shall be entitled to construct, olding, with all dwelling-house for but shall not, make any other improvement in respect of his holding without his landlord's permission in writing.

(Secs. 90-91)

(2) A non-occupancy-riyat who would, but for the want of his landlord's permission in writing, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

90. (1) A landlord may, by application to such Revenue-officer as the [Board of Revenue]¹ may appoint, register any improvement which he has lawfully made, or which has been lawfully made at his expense, or which he has assisted a tenant in making.

Registration
of landlord's
improve-
ments.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the [Provincial Government]² may, by rule, direct.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

- (a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;
- (b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

91. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject matter thereof is under inquiry in a Revenue Court.

Application
to record
evidence as
to improve-
ment.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any persons claiming under them.

1. Substituted by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act, III of 1916), for "L.G."

The functions of the Board of Revenue are discharged by the Revenue Commissioner, Orissa (see Orissa L. S. R. & O. Vol. I, p. 344).

2. Substituted by the A.O. for "L.G."

(Sects. 92-93)

Compensa-
tion for
raiyat's
improve-
ments.

92. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejection conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the twenty-seventh day of June, 1892, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The [Provincial Government]¹ may, by notification in the [Official Gazette],² make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the [Provincial Government]¹ thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

93. (1) In estimating the compensation to be awarded under section 92 for an improvement, regard shall be had—

(a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(b) to the condition of the improvement, and the probable duration of its effects;

(c) to the labour and capital required for the making of such an improvement;

(d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement;

(e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

Principle
on which
compensa-
tion is to be
estimated.

1. Substituted by the A. O. for "L. G."

2. Substituted by *ibid* for "I. o. G."

(Secs. 94-95)

(2) When the amount of the compensation has been assessed the Court may, if the landlord and raiyat agree, direct that instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes

94. (1) The Collector may, on the application of the landlord of a holding,

and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the tenure or estate in which it is comprised, such as the use of the land for a village road, tank for drinking-water or embankment, or for any charitable, religious or educational purpose, or for the purpose of mining, manufacture, drainage or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose,

Acquisition
of land for
building and
other pur-
poses.

authorise the acquisition thereof by the landlord upon such conditions as the Collector may think fit, and require the tenant to sell his interest in the holding or part to the landlord upon such terms as may be approved by the Collector, including full compensation to the tenant.

(2) If the landlord tenders to the tenant such sum as the Collector has approved under sub-section (1) as payment for any land, and the tenant refuses to receive the same, the Collector may, on the landlord depositing the said sum with the Collector, give possession of the land to the landlord in the prescribed manner.

1[95. (1) When the Collector is satisfied that no communal land is set apart for the common use of the villagers or for the supply of fuel to them or that any land so set apart or used is inadequate for the purpose, he may, after giving notice to the landlord and any other persons affected thereby and after making such enquiry as he thinks fit, determine the land or additional land needed for the purpose and apply to the Provincial Government for the acquisition under the Land Acquisition

Power of
Collector
to acquire
land for
communal
purposes.

Provincial Government may
take order for acquisition of s1

the provisions of that Act shall apply as if the Provincial Government had directed the Collector to take order for the acquisition of such land under section 7 of the said Act and the land shall, after such acquisition, be set apart for the purpose for which it is acquired.

1 Inserted by the Orissa Tenancy (Amendment) Act, 1918 (Orissa Act XII of 1918), s. 2.

This provision takes effect from 25th August, 1918. The Original s. 15 (Restrictions on sub-letting) was omitted by the Orissa Tenancy (Amendment) Act, 1918 (Orissa Act VIII of 1928), s. 16.

(2) The cost of such acquisition including all charges incidental thereto, shall be borne by the Provincial Government, any local authority or authorities having jurisdiction over the area in which the land is situated, the landlord and the raiyats or other persons benefited thereby in such proportions as the Collector may fix. If a local authority, landlord, raiyat or other person makes default in paying its or his share, if any, of such cost, the Collector may recover such share—

- (i) in the case of local authority, in such manner as may be prescribed; and
- (ii) in the case of a landlord, raiyat or other person, in the same manner as an arrear of land revenue.

(3) Subject to such rules as the Provincial Government may prescribe in this behalf, the share, if any, of such cost payable by a raiyat under this section together with interest thereon at six per cent per annum may, at the discretion of the Collector, take the form of annual payments, the amount of such payments being fixed with due regard to the prevailing rents.

*Explanation.—The expression 'communal land' means land recorded as *Gochar*, *Rakshit*, or *Sarbadsaharan* in the record-of-rights or waste land which is either expressly or impliedly set apart for the common use of, or for the supply of fuel to the villagers whether recorded as such in the record-of rights or not.]*

196. *

Surrender and Abandonment

Surrender.

97. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice in writing of his intention to surrender.

1. "Restrictions on usufructuary marriage" omitted by the Orissa Tenancy Amendment Act, 1933 (Orissa Act VIII of 1933), s. 15.

(Sec. 98)

(3) When a raiyat has surrendered his holding, the Court shall in the following cases, for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given, namely:—

- (a) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;
- (b) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Revenue Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless the landlord is informed of the incumbrance, and the surrender is made with the consent, in writing, of the landlord and the incumbrancer.

(7) Save as provided in sub-section (6), nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

98. (1) If a non-resident raiyat, or a resident raiyat who voluntarily abandons his residence in the village, ceases to cultivate his holding either by himself or some other person, without giving notice to his landlord and without arranging for payment of his rent as it falls due, the landlord may, at any time after the expiration of the agricultural year in which the raiyat thus ceases to cultivate, enter on the holding and let it to another tenant, or take it into cultivation himself. Abandonment.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in such manner as the [Provincial Government]¹ may, by rule, direct.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the six months, from the date of thereupon the Court may, on not voluntarily abandon his

¹. Substituted by the A. O. for "L. G."

(Sec. 99)

order recovery of possession on such terms (if any) with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) When the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of that raiyat. If the sub-lessee fails to accept the offer within the time to accept the offer, the landlord may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

Subdivision of tenancy

Division of
tenancy not
binding on
landlord
without his
consent.

[99.] (1) Save as provided in sections 18, 31 and 31-A and otherwise provided in the next two succeeding sub-sections a division of tenure or holding or distribution of rent payable in respect thereof, shall not be binding on the landlord unless it is made with his express consent in writing or with that of his agent duly authorised in that behalf :

Provided that if it is proved that in any landlord's rent roll there is an entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

(2) Where there is division of tenure or holding and distribution of rent payable in respect thereof, whether such division took place before or after the coming into force of the Orissa Tenancy (Amendment) Act, 1947, and the portion of the tenure or holding so divided is defined by metes and bounds, such division shall not require the express consent provided in sub-section (1) and the landlord shall, on receiving notice of such division and distribution of rent be deemed to recognise the division of tenure or holding and distribution of rent agreed upon by the co-sharer tenants.

(3) (a) The landlord may, within six months of the date of the receipt of notice of the division of tenure or holding and distribution of rent referred to in sub-section (2), make an application to the Collector for a just and equitable distribution of rent of such tenure or holding making such enquiry as he deems fit, which is fair.

(*Secs. 100-101*)

(b) If the co-sharer tenants fail to arrive at an agreement in respect of the distribution of rent though there may be division of tenure or holding by metes and bounds, the Collector shall, on the application of one or more co-sharer tenants, distribute the rent of such tenure or holding.

(c) An order passed by the Collector under clause (a) or clause (b) of this sub-section shall be deemed to have divided the tenure or holding as the case may be, with the express consent of the landlord as required by sub-section (7).

(4) The distribution of rent of the tenure or holding by the Collector shall be made in accordance with the rules prescribed by the Provincial Government.

Explanation.—For the purpose of this section, a tenure or holding shall be deemed to be divided by metes and bounds if there is separate possession of portion of such tenure or holding by tenant.]

Ejection

100. No tenant shall be ejected from his tenure or holding except in execution of a decree.

No ejectment except in execution of decree.

Measurements

101. (1) Subject to the provisions of this section and any contract, a landlord may, by himself or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure.

Landlord's right to measure land.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases, namely :—

(a) where the area of the land is less than one acre.

(b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation ;

(c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

(Secs. 102-104)

Power for
Court to
order
tenant to
attend and
point out
boundaries.

Standard of
measure-
ment.

Power to
call upon
co-owners
to show
cause why
they should
not appoint
common
manager.

102. (1) Where a landlord desires to measure any land which he is entitled to measure under section 101, the Revenue Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

103. (1) Every measurement of land made by order of a Revenue Court or of a Revenue-officer in any suit or proceeding under this Act shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The [Provincial Government]¹ may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area; and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers

104. When any dispute exists between co-owners of an estate, sub-proprietary interest or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

- (a) inconvenience to the public, or
- (b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector and in case (b) of any person having an interest in the estate, sub-proprietary interest or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate, sub-proprietary interest or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876², and if he is a co-owner of a sub-proprietary interest or tenure, unless he is registered or recorded in the manner indicated in clause (a), or clause (b) of section 60.

Ban
VII of
1876

1. Substituted by the A. O. for "L. G."

2. Printed in Vol. II of this Code, p. 159.

(Secs. 105-109)

105. If the co-owners fail to show cause as aforesaid within one month after service of a notice under section 104, the District Judge may make an order directing them to appoint a common manager; and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to order them to manager if cause shown.

106. If the co-owners do not, within such period, not being less than one month after the making of an order under section 105, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

Power to appoint manager if order is not obeyed.

(a) direct that the estate, sub-proprietary interest or tenure be managed by the Court of Wards, in any case in which the Court of Wards consents to undertake the management thereof; or

(b) in any case appoint a manager.

107. The [Provincial Government]¹ may nominate a person² for any local area to manage all estates, sub-proprietary interests and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of section 106; and, when any person has been so nominated, the District Judge may direct the manager under that clause to manage the estate, sub-proprietary interest or tenure, as the case may be, of any estate the District Judge may direct, and the co-owners themselves as manager.

Power to nominate person to manage in all under clause (b) of last section.

108. In any case in which the Court of Wards undertakes, under section 106, the management of an estate, sub-proprietary interest or tenure, so much of the provisions of the Court of Wards Act, 1879³, as relates to the management of immovable property shall apply to the management.

A .. .
of the Co.
of Wards
Act, 1879
manag-
ment by
Court of
Wards,

109. (1) A manager appointed under section 106 may, if the District Judge thinks fit, be remunerated by a fixed salary or a fixed percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

Prov.
applicable
manager
co-owner-

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

1. Substituted by the A. O. for "L. G."

2. See Orissa L. S. R. & O., Vol. I, pt. VII.

3. This Act has been repealed by the Orissa Court of Wards Act, 1947 (Orissa Act XXVI of 1947), s. 2 and Schedule. Reference should, therefore now be made to the latter Act.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might, but for his appointment, have exercised and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 115 or under section 211.

(8) He shall be removable by the order of the District Judge and not otherwise.

(9) When the office of manager falls vacant in any manner, the District Judge may, subject to the provisions of section 107, appoint another manager in his place; and the foregoing provisions of this section shall apply to any manager so appointed.

110. When an estate, sub-proprietary interest or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 106 or section 109, sub-section (9), the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

111. The High Court may make rules defining the powers and duties of managers under this Chapter.

CHAPTER XI

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS

Part I.—Record-of-rights

112. (1) The [Provincial Government]^{} may, in any case^{*} if it thinks fit,
make an order^{*} directing that a survey be made and a record-of-rights
be prepared, by a Revenue-officer, in respect of the lands in any
local area, estate or tenure or part thereof.*

1. Substituted by the A. O. for "L. G."

2. The words "with the previous sanction of the Governor General in Council, and may," were omitted by the Devolution Act, 1920 (XXXVIII of 1920), s. 2 and Sch. I.

*3. The words "without such sanction in any of the cases next hereinafter mentioned" were omitted by *ibid.**

*4. For notifications issued under this *act*.*

1. L. pt. VII.

(Sec. 112)

(2) ¹[In particular and without prejudice to the generality of the foregoing power, the [Provincial Government]² may make such an order³ in the following cases], namely :—

(a) where—

- (i) the landlord or tenants, or
 - (ii) a proportion of not less than one-half of the total number of landlords, or
 - (iii) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests, respectively, in the lands of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or
 - (iv) a proportion of not less than one-fourth of the total number of tenants,
- applies, or apply, for such an order, depositing, or giving security for, such amount for the payment of expenses as the [Provincial Government]² directs;
- (b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;
- (c) where the local area, estate or tenure or the part thereof [belongs to, or is managed on behalf of, the Crown, or is managed by]⁴ the Court of Wards or a manager appointed by the District Judge under section 106 or section 109, sub-section (9);
- (d) where a settlement of land-revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof.

Explanation 1.—The term “settlement of land-revenue”, as used in clause (d), includes a settlement of rents in an estate or tenure which [belongs to the Crown]⁵.

Explanation 2.—A superior landlord may apply for an order under this section, notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

2. Substituted by the A. O. for ‘L. G.’

3. For notification issued under this section, see Orissa L. S. R. & O., Vol. I, pt. VII.

4. Substituted by the A. O. “for belongs to, or is managed by, the Government or”.

5. Substituted by *ibid* for “belongs to the Government”.

(Sec. 113)

(3) A notification in the [Official Gazette]¹ of an order under this section shall be conclusive evidence that the order has been duly made.

(4) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the [Provincial Government]².

Particulars
to be
recorded.

113. Where an order is made under section 112, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

- (a) the name of each tenant or occupant;
- (b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, *bazayastidar*, raiyat holding at fixed rates, settled raiyat, occupancy-raiyat, non-occupancy-raiyat, under-raiyat or *chandnadar*; and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) the name of each tenant's landlord;
- (e) the name of each proprietor in the local area or estate;
- (f) the rent payable at the time the record-of-rights is being prepared;
- (g) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;
- (h) if the rent is a gradually increasing rent, the time at which and the steps by which, it increases;
- (i) the rights and obligations of each tenant and landlord in respect of—
 - (i) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well or any other source of supply, and
 - (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;
- (k) the special conditions and incidents (if any) of the tenancy;

1. Substituted by the A. O. for "I. o. G."

2. Substituted by *ibid.* for "L. G."

3. There is no clause (i) in this section.

(Secs. 114-116)

(l) any right of way or other easement attaching to the land for which a record-of rights is being prepared;

(m) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority.

114. The [Provincial Government]¹ may, for the purpose of settling or averting disputes existing or likely to arise between land-lords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water,

make an order directing that a survey be made and a record-of-rights be prepared by a Revenue Officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

(a) the use by tenants of water for agricultural purposes whether obtained from a river, *jhil*, tank or well or any other source of supply; and

(b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

115. On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the raiyats, of an estate or tenure, and on the applicant security for the required amount subject to, and in accordance [Provincial Government]¹, asc particulars specified in section 113 with respect to the estate or tenure or any part thereof.

Power to order survey and preparation of record-of-rights as to water.

116. (1) When a draft record-of-rights has been prepared, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

Power for Revenue-Officer to record particulars on applica-
tion of proprietor,
tenure-
holder
of large
proportion
of raiyats.

Preliminary publication, amendment, and final publication of record-of-
rights.

(2) When such objections have been considered and disposed of according to such rules as the [Provincial Government]¹ may prescribe, and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent Roll has been incorporated with the record under section 124, sub-section (3), the Revenue Officer shall

1. Substituted by the A. O. for "L. G."

(Secs. 117-118)

finally frame the record, and shall cause it to be finally published in the prescribed manner ; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

Presumption as to final publication and correctness of record-of-rights.

117. (1) In any suit or other proceeding in which a record-of-rights published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied ; and a certificate signed by the Revenue Officer, or by the Collector of any district in which the local area, estate or tenure or part thereto to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication.

(2) The [Provincial Government]¹ may, by notification², declare, with regard to any specified area, that a record-of-rights has been finally published for any village included in such area ; and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect :

Provided that, if any entry in a record-of-rights is altered in a subsequent record-of-rights, the later entry shall be presumed to be correct until it is proved by evidence to be incorrect, but the previous entry shall be admissible as evidence of the facts existing at the time such entry was made.

Part II.—Settlement of Rents, Preparation of Settlement Rent Roll, and Disposal of Objections, in cases where a settlement of land revenue is being or is about to be made.

118. In every case in which a settlement of land-revenue is being or is about to be made, the Revenue Officer shall, after publication of the draft of the record-of-rights under section 118, sub-section (1),—

- (a) settle fair and equitable rents for tenants of every class,
- (b) notwithstanding anything contained in section 248, settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of clause (m) of section 113, that the occupant is not entitled to hold it without payment of rent, and

1. Substituted by the A. O. for "L. G."

2. For notifications issued under this section, see Orissa L. S. R. & O. Vol. I, pt. VII

Settlement of rents and preparation of Settlement Rent Roll when to be undertaken by Revenue officer.

(Sec. 119)

(c) prepare a Settlement Rent Roll.

Provided that the Revenue Officer shall not settle the rents of tenants of every class in an estate or tenure belonging to [the Crown]¹ if it does not appear to the [Provincial Government]² to be expedient that he should do so.

119. (1) For the purposes of settling rents under this Part and preparing a Settlement Rent Roll, the Revenue Officer may proceed in any one or more of the following ways, or partly in one of those ways and partly in another, that is to say—

- (a) if in any case the landlord and tenant agree between themselves as to the amount of the rent fairly and equitably payable; the Revenue Officer shall satisfy himself that the rent so agreed upon is fair and equitable; and if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent;
- (b) the Revenue Officer may himself propose what he deems to be the fair and equitable rent; and if the amount so proposed is accepted, either orally or in writing, by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent;
- (c) if the circumstances are, in the opinion of the Revenue Officer, such as to make it practicable to prepare a Table of Rates showing for any local area, estate, tenure or village or part thereof, or for each class of land in any local area, estate, tenure or village or part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and raiyats and under-raiyats of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described;
- (d) the Revenue Officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under section 116, sub-section (1), or by enhancing or reducing such rentals:

Provided that, in making any such settlement, regard shall be had to the principles laid down in sections 7 to 10, 32 to 43, 45, 46, 51, 58 to 60, 231 and 247.

Procedure
for settle-
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1. Substituted by the A. O. for "the Government"

2. Substituted by the A. O. for "L. G".

THE ORISSA TENANCY ACT, 1913

(Secs. 120-121)

[B. & O. A.]

Contents of
Table of
Rates.Local
publication
of Table.Revenue-
officer to
deal with
objections.Table to be
submitted to
superior
Revenue
authority.Proceedings
of confirm-
ing
authority.Effect of
Table.Application
of Table of
Rates.

120. (1) If a Table of Rates is prepared, it shall specify—

(a) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is in the opinion of the Revenue Officer necessary or practicable to fix a rate or different rates of rent; and

(b) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

(2) When the Revenue Officer has prepared the Table of Rates, he shall publish it in the local area, estate, tenure or village to which it relates, in the vernacular language prevailing in the district, and in the prescribed manner.

(3) Any person objecting to any entry in the Table of Rates may present a petition to the Revenue Officer within a period of one month after such publication, and the Revenue Officer shall consider any such objection and may alter or amend the Table.

(4) If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue Officer shall submit his proceedings to the Revenue authority empowered by rule made by the [Provincial Government]¹ to confirm the Tables and Rent Rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposal, and shall forward any petitions of objection which he may have received.

(5) The confirming authority may confirm a Table submitted under sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further inquiry.

(6) When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class, for each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies.

121. When a Table of Rates has been confirmed under section 120, sub-section (5), the Revenue Officer may settle all or any of the rents, and prepare the Settlement Rent Roll, on the basis of the rates shown in the Table, by calculating the rental of each tenure or each holding of a raiyat or under-raiyat on the area of such tenure or holding at the said rates:

¹ Substituted by the A. O. for "G".

(Sec. 127)

(g) that the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land which is the subject of the tenancy, have not, or has not, been recorded, or have, or has, been wrongly recorded.

[The Crown]¹ shall not be made a defendant in any such suit, unless [the Crown]² is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(4) If it appears to the Court that the entry of rent settled is incorrect, it shall, in case (a) or case (c) mentioned in sub-section (3), declare that no rent is payable, and shall in any other case settle a fair rent,

and, in any case referred to in clause (f) or clause (g) of the said sub-section (3), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit

(5) When the Court has declared under sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled

(6) In settling a fair rent under sub-section (4), the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent Roll, as settled under sections 119 to 124.

(7) Any rent settled by the Court under sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent Roll.

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 119 to 124.

(9) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district who shall make a note of such orders or decree in the record of rights finally published under section 116, sub-section (2), and such note shall be deemed to be part of the record.

127. Subject to the provisions of section 126, all rents settled under sections 119 to 124 and entered in a record-of-rights finally published under section 116, or settled under section 125, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Presumptions as to rents settled under sections 119 to 125.

1. Substituted by the A. O. for "The Secretary of State for India in Council".

2. Substituted by the A. O. for "the Government".

(Sec. 126)

rights, on any objection made under section 120, sub-section (3), or section 123 ; and such appeal shall lie to such superior Revenue authority as the [Provincial Government]¹ may, by rule, prescribe.

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 126 :

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Jurisdiction of Civil Courts in matters relating to rent

126 (1) Any person aggrieved by an entry of a rent settled in a Settlement Rent Roll prepared under sections 119 to 124 and incorporated in a record-of-rights finally published under section 116, or by an omission to settle a rent for entry in such Settlement Rent Roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(2) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a Revenue authority under section 125, then within six months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds, and on no others, namely :—

- (a) that the land is not liable to payment of rent ;
- (b) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent ;
- (c) that the relation of landlord and tenant does not exist ;
- (d) that land has been wrongly recorded as part of a particular estate, sub-proprietary interest or tenancy, or wrongly omitted from the lands of an estate, sub-proprietory interest or tenancy ;
- (e) that the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging ;
- (f) that the Revenue Officer has not postponed the operation of the settled rent under the provisions of section 139, proviso (a), or has wrongly fixed the date from which it is to take effect under that clause ;

¹. Substituted by the A. O. for "I. G".

(Sec. 127)

(g) that the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land which is the subject of the tenancy, have not, or has not, been recorded, or have, or has, been wrongly recorded.

[The Crown]¹ shall not be made a defendant in any such suit, unless [the Crown]² is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(f) If it appears to the Court that the entry of rent settled is incorrect, it shall, in case (a) or case (c) mentioned in sub-section (3), declare that no rent is payable, and shall in any other case settle a fair rent,

and, in any case referred to in clause (f) or clause (g) of the said sub-section (3), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

(5) When the Court has declared under sub-section (f) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under sub-section (f), the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent Roll, as settled under sections 119 to 124.

(7) Any rent settled by the Court under sub-section (f) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent Roll.

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 119 to 124.

(9) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district who shall make a note of such orders or decree in the record of rights finally published under section 116, sub-section (2), and such note shall be deemed to be part of the record.

127. Subject to the provisions of section 126, all rents settled under sections 119 to 124 and entered in a record-of-rights finally published under section 116, or settled under section 125, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Presumptions as to rents settled under sections 119 to 125.

1. Substituted by the A. O. for "The Secretary of State for India in Council".

2. Substituted by the A. O. for "the Government".

(Sec. 128)

Part III.—Settlement of Rents and Decision of Disputes in cases where a settlement of land-revenue is not being or is not about to be made.

Settlement
of rent by
Revenue-
officer
in cases
where a
settlement
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to be made.

128. (1) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, either the landlord or the tenant applies, within three months from the date of the certificate of the final publication of the record-of-rights under section 116, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Explanation—A superior landlord may apply for a settlement of rent, notwithstanding that his estate or tenure or part thereof has been temporarily leased.

(2) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue-officer has recorded, in pursuance of clause (m) of section 113, that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies, within three months from the date of the certificate of the final publication of the record-of-rights under section 116, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent for the land

(3) Every application under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in the Court-fees Act, 1870,¹ bear such stamp as the [Provincial Government]² may prescribe by notification in the [Official Gazette].³

(4) In settling rents under this section, the Revenue-officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Revenue Courts in increasing or reducing rents, as the case may be.

(5) The Revenue-officer may in any case under this section propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted orally or in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

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2. Substituted by the A. O. for "L. G."

3. Substituted by the A. O. for "I. o. G."

(Secs. 129-130)

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue-officer shall satisfy himself that the amount agreed upon is fair and equitable, and if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (4) and (5).

(7) An applicant for a settlement of rent under this section may not dispute any entry in, or any omission from, the finally-published record, unless he files simultaneously a plaint under section 130 for the alteration of such record, in which case the Court shall proceed to dispose of the same before dealing with the application under this section.

129 Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise :—

- (a) whether the land is, or is not, liable to the payment of rent ;
- (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent ;
- (c) whether the relation of landlord and tenant exists ;
- (d) whether the land has been wrongly recorded as part of a particular estate, sub-proprietory interest or tenancy, or wrongly omitted from the lands of an estate, sub-proprietory interest or tenancy ;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging ;
- (f) whether the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land, have not, or has not, been recorded, or have, or has, been wrongly recorded ,

the Revenue-officer shall try and decide such issue and settle the rent under section 128 accordingly :

Provided that the Revenue-officer shall not try any issue under this section which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 130.

130. In proceedings under this Part, a suit may be instituted before a Revenue-officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 116, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record ; whether such dispute be between

Decision of
questions
arising
during the
course of
settlement of
rents under
this Part.

Institution
of suit
before a
Revenue-
officer.

(See. 137)

but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(2) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue-officer shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 33 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

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Power of
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137. (1) Notwithstanding anything contained in section 136, if, in any case, while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue-officer specially empowered in this behalf by the [Provincial Government]¹ may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act : and the provisions of section 144 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 135 on the ground that the rent settled by the Revenue-officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of the order, under sub-section (1), settling a rent as a fair and equitable rent, direct the revision of the rent so settled.

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(Sects. 138-141)

138. A note of all rents settled and of all decisions of disputes, on revision or appeal under section 132, section 135, or sub-section (2) or sub-section (3) of section 137, shall be made in the record-of-rights finally published under sub-section (2) of section 116; and such note shall be deemed to be part of the record.

Note of decisions in record.

139. When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the Settlement Rent Roll:

Date from which settled rent takes effect.

Provided as follows:—

(a) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being or is about to be made, the rent settled shall, subject to the provisions of sections 247 and 248, take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue-officer,

(b) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

140. When an order has been made under section 112, directing the preparation of a record-of-rights, no Court shall—

Stay of proceedings during preparation of record-of-rights.

(a) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record-of-rights, and

(b) where a settlement of land-revenue is not being made or is not about to be made—until three months after the final publication of the record-of-rights,

entertain any application made under section 210, or any suit or application for the alteration of the rent or the determination of the status of any tenant, in the area to which the record-of-rights applies.

141. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing of such a record or of any part of section 126, for the alteration of any entry in such a record of a rent settled under sections 119 to 124;

Limitation of jurisdiction of Civil Courts in matters other than rent, relating to record-of-rights.

(See, 137)

but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(2) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue-officer shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 31 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

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Power of
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137. (1) Notwithstanding anything contained in section 136, if, in any case, while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue-officer specially empowered in this behalf by the [Provincial Government]¹³ may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act : and the provisions of section 144 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 135 on the ground that the rent settled by the Revenue-officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of the order, under sub-section (1), settling a rent as a fair and equitable rent, direct the revision of the rent so settled :

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(Sects. 143-145)

143. (1) The [Provincial Government]¹

* * * * *
² may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights finally published under this Chapter, invest a Revenue-officer with the following powers or either of them, namely :—

Power to authorize special settlement in special cases

(a) power to settle all rents ;

(b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would, on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

(3) A settlement of rents under this section shall be made in the manner provided by sections 118 to 127.

When the [Provincial Government]¹ takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the [Provincial Government]¹, and the revision, by direction of the Board of Revenue under sub-section (2) of section 125, of a record-of-rights or any portion of a record-of-rights, prepared under this section, shall be subject to like confirmation by the [Provincial Government]¹.

144. (1) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-riayat having occupancy rights, for fifteen years, and, in the case of a non-occupancy-holding or the holding of an under-riayat not having occupancy rights, for five years ; and no such rent shall be reduced within the periods aforesaid, save on the ground of alteration in the area of the holding or on the ground specified in clause (a) of sub-section (1) of section 45.

Period for which rents as settled are to remain unaltered.

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

145. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be

Expenses of proceedings under Chapter.

1. Substituted by the A. O. for "L. G".

2. The words "with the previous sanction of the Governor General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920), s. 2 and Sch. I.

(Sec. 142)

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under clause (d) of sub-section (2) of section 112, which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877.¹

**Stay of suits
in which
certain
issues arise.**

142. (1) Where a record-of-rights has been finally published in respect of the land in any area in which a settlement of land-revenue is not 1 suit
affecting rights
from the of
rights,
any of the following issues, namely :—

- (a) whether the land is or is not liable to the payment of rent ;
- (b) whether the relation of landlord and tenant exists ;
- (c) whether the land is part of a particular estate or tenancy ;
or
- (d) whether there is any special condition or incident of the tenancy, or whether any right of way or other easement attaches to the land.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not entertain any suit under section 130 involving the decision of the same issue.

(3) Where, in the course of settling fair rents under section 128, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue-officer under section 130, he is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings for the settlement of a fair rent, pending a final decision on the issue.

And, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights had been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of three months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

(Secs. 143-145)

143. (1) The [Provincial Government]¹ * * * * * Power to authorize special settlement in special cases

* * * * * ² may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights finally published under this Chapter, invest a Revenue-officer with the following powers or either of them, namely :—

(a) power to settle all rents :

(b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would, on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases

(3) A settlement of rents under this section shall be made in the manner provided by sections 118 to 127.

When the [Provincial Government]¹ takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the [Provincial Government]¹, and the revision, by direction of the Board of Revenue under sub-section (2) of section 125, of a record-of-rights or any portion of a record-of-rights, prepared under this section, shall be subject to like confirmation by the [Provincial Government]¹.

144. (1) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-raiyat having occupancy rights, for fifteen years, and, in the case of a non-occupancy-holding or the holding of an under-raiyat not having occupancy rights, for five years; and no such rent shall be reduced within the periods aforesaid, save on the ground of alteration in the area of the holding or on the ground specified in clause (a) of sub-section (1) of section 45.

Period for which rents as settled are to remain unaltered:

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

145. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land revenue is being made in respect of a particular area

Expenses of proceedings under Chapter.

1. Substituted by the A. O. for "L. G".

2. The words "with the previous sanction of the Governor General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920), s. 2 and Sch. I.

(Secs. 116-118)

incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter, or such part of those expenses as the [Provincial Government]¹ may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part, in such proportions, and in such instalments (if any), as the [Provincial Government]¹ having regard to all the circumstances, may determine.

(2) The estimated amount of the expenses likely to be incurred in the preparation of survey maps and records-of-rights, or restoration of boundary marks for a local area, estate, or such part of such amount as the [Provincial Government]¹ may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(3) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by [the Provincial Government]² as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

(4) The cost of preparing copies of survey maps and records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

Explanation.—The word "tenure" in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

Presumption as to
facticity of
rent not to
apply where
records-of-
rights have
been
prepared

Demarcation
of
village
boundaries

Validation
of publication
of certain part
records

tenancy.

113, clause (b),
of any tenancy,
will apply to that

147. In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall, so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey (if any);

and, where village maps prepared at a previous revenue survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.

148. All records, published, whether in draft or final form, before the fifth day of November, 1898, under section 103 of the

¹ Substituted by the A. O. for "L. G".

² Substituted by the A. O. for "the Government".

(Sects. 119-153)

III of 1885 Bengal Tenancy Act, 1885, as originally passed, shall be deemed to have been duly published.

III of 1885. 149. Every settlement of rent or decision of a dispute by a Revenue-officer before the fifth day of November, 1898, under section 104 or section 106 of the Bengal Tenancy Act, 1885, as originally passed, in respect of which no appeal was, before that date, preferred to the Special Judge appointed under section 108 of that Act, as originally passed, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final.

Effect of settlements of rent and decisions by Revenue-officers made before the 5th November, 1898.

CHAPTER XII

RECORD OF PROPRIETORS' PRIVATE LANDS

150. The [Provincial Government]¹ may make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands.

Power of Government to order survey and record of proprietors' private lands.

151. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the [Provincial Government]¹ ascertain and record whether the land is or is not a proprietor's private land.

Power for Revenue-officer to record private land on application of Proprietor or tenant

152. When a Revenue-officer proceeds under either section 150 or section 151, the provisions of sections 116, 117, 130, 131, 132, 134 and 135 shall apply.

Procedure for recording private land

153. (1) Except in estates of the class referred to in section 154, the Revenue-officer shall record as a proprietor's private land—

- (a) land which is proved to have been cultivated as *nij-jote*, *lhamar* or *khudkast* by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the commencement of this Act, and
 (b) cultivated land which is recognized by village usage as proprietor's *nij-jote*, *lhamar* or *khudkast*.

General rules for determination of proprietors' private lands.

(2) In determining whether any other land in any such estate ought to be recorded as a proprietor's private land, the officer shall have regard to local custom or usage, and to the question whether the land was before the twenty-first day of August, 1908, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

1. Substituted by the A. O. for "L. G".

(Secs. 151-155)

(3) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land in any such estate as a proprietor's private land unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).

(4) If any question arises in any Court as to whether land in any such estate is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

154. (1) In VIII of a record-of-rights has been made between the years 1891 and 1900 under Chapter X of the Bengal Tenancy Act, 1891, and again between the years 1906 and 1912 inclusive, a proprietor's private land shall include—

(a) land which has been recorded as *nij-jote* in the record-of-rights prepared between the years 1906 and 1912, and

(b) land recorded as the *nij-chas* of a proprietor or sub-proprietor [other than a sub-proprietor referred to in sub-clause (i) of clause (21) of section 3] in the record-of-rights prepared between the years 1891 and 1900, which has again been recorded as his *nij-chas* in the record-of-rights prepared between the years 1906 and 1912.

(2) Any land, recorded as *nij-chas* in a record-of-rights finally published between the years 1906 and 1912, which falls within the category of proprietor's private land under the provisions of clause (b) of sub-section (1), shall be deemed to have become proprietor's private land with effect from the date of the final publication of such record.

(3) No land in a temporarily-settled estate which is not covered by sub-section (1) shall be held to be a proprietor's private land.

CHAPTER XIII

DISTRAINT

155. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, recover the arrear under the provisions of this Chapter, by distraining, while in the possession of the cultivator,—

(1) any crops or other products of the earth standing or ungathered on the holding; and

*Cases in
which dis-
trust may
be made.*

(Sec. 156)

(2) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead :

Provided that no distressment shall be made—

- (i) by a proprietor or manager, as defined in the Land Registration Act, 1876¹, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under that Act ; or
- (ii) by a sub-proprietor, *bazyaftidar*, or tenure-holder, unless his name and the extent of his interest in the land in respect of which the arrear is due have been—
 - (a) registered under section 14, 15 or 16, or under any law previously in force, or
 - (b) recorded in a record-of-rights finally published under Chapter XI or under some other law for the time being in force ; or
- (iii) by an agent employed in the collection of rent, unless he is expressly authorized by power of attorney in that behalf ; or
- (iv) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed ; or
- (v) where the holding or any part of the holding of a raiyat has been sub-let with the written consent of the landlord—in respect of the produce of such holding or part ; or
- (vi) where the holding or any part of the holding of a *bazyaftidar* raiyat has been sub-let—in respect of the produce of such holding or part.

156. (1) The distrainer shall, at the time of making the distressment, serve on the defaulter a written demand for the arrear due and the costs incurred in making the distressment, with a notice stating the grounds on which the distressment is made and containing also the following particulars, namely :—

- (a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification ;

Service of
demand and
notice.

(Sects. 157-158)

- (b) the name of the tenant;
- (c) the period in respect of which the arrear is claimed;
- (d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract or proceedings, as the case may be, under which that amount is payable;
- (e) the nature and approximate value of the produce to be distrained;
- (f) the place where it is to be found, or such other particulars as may suffice for its identification; and
- (g) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The said notice shall be signed and verified in the manner provided in rules 14 and 15 in Order VI in the first Schedule to the Code of Civil Procedure, 1908.

V of

(3) Where the distrainer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and notice on that person likewise.

(4) The demand and notice shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the distrainer shall affix copies of the demand and notice on a conspicuous part of the outside of the house in which he usually resides.

Right to distrain after delivering a list of property to owner.

(1) Unless the demand, with all costs of the distraint, be immediately paid or tendered, the distrainer may distrain property referred to in section 155 to such value as may be expected to meet such demand and costs.

(2) Before seizing any property, the distrainer shall prepare a list or description thereof, and shall deliver a copy of the list to the owner of the property, or, if he is absent, shall affix it at his usual place of residence.

Right to reap, etc., produce

(1) A distraint under this Chapter shall not prevent any person from reaping, gathering or storing any produce or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distrainer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(Secs. 159-161)

(3) In either case the distrained property shall remain in the charge of the distrainer or of some other person appointed by him in this behalf.

159. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector; and the Collector may, if he thinks it necessary to do so, depute an officer to support the distrainer in making the distraint.

Assistance
of public
officer in
making
distraint.

160. (1) Within five days from the time of the storing of any distrained crops or products, or, if the crops or products do not, from their time of being distrained, within five days from the time of the sale of the same, the distrainer shall apply for sale of the same at the office of Kanungo, as the [Provincial Government]¹ may prescribe.

Application
to public
officer for
sale.

(2) The said application shall be in writing, shall contain an inventory or description of the property distrained, and shall state—

- (a) the name of the defaulter, and his place of residence ;
- (b) the amount due ;
- (c) the date of the distraint ; and
- (d) the place in which the distrained property is deposited ;

and shall be accompanied by the sum required for the service of a notice upon the defaulter under clause (b) of sub-section (1) of section 161.

161. (1) When any officer referred to in section 160, sub-section (1), receives an application under that section, he shall forthwith—

- (a) send a copy of the application to the Collector ;
- (b) serve a notice, in the prescribed form, on the person whose property has been distrained, requiring him either to pay the amount demanded or to institute a suit to contest the demand of the distrainer before the Collector within the period of fifteen days from the receipt of the notice ;
- (c) send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application ; and
- (d) deliver a copy of the proclamation to the peon to be put up property is deposited.

Procedure
on receipt
of such
application.

1. Substituted by the A. O. for "L. G".

(Sect. 162-165)

(2) The said proclamation shall contain a description of the distrained property, and shall state the demand for which the property is to be sold and the place where the sale is to be held.

Suspension
of sale
when suit
instituted.

162. (1) If a suit is instituted before the Collector in pursuance of the notice referred to in clause (b) of sub-section (1) of section 161, the Collector shall send to the officer referred to in sub-section (1) of section 160, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of the suit.

(2) A person whose property has been distrained under this Chapter may, immediately after the restraint and before an application is made under sub-section (1) of section 160, institute a suit to contest the demand of the distrainer; and the Collector shall thereupon proceed as provided in sub-section (1).

(3) When a certificate under sub-section (1) or sub-section (2) is received by or presented to an officer referred to in section 160, sub-section (1), he shall suspend further proceedings in regard to the sale of the distrained property, pending the decision of the suit.

Withdrawal
of restraint
when
security
given for
payment of
any sum
that may be
decreed.

163. (1) When any person whose property has been distrained has instituted a suit to contest the demand, at any time, execute a bond, whatever sum may be at interest and costs.

(2) When such a bond is executed, the Collector shall give to the said person a certificate to that effect, or, if so requested, shall serve the distrainer with notice that such a certificate has been given; and upon such certificate being presented to the distrainer by the said person, or served on the distrainer by the Collector, the property shall be released from restraint.

Sale when to
be made.

164. On the expiration of the period fixed in the proclamation of sale, the officer referred to in section 160, sub-section (1), shall—

(a) if a certificate under section 162 of the institution of a suit to contest the demand of the distrainer has not been received by or presented to him,

proceed to sell the property, or such part thereof as it may be necessary to sell in order to realise the said demand and costs.

165. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the officer holding the sale is of opinion that it is likely to sell there to better advantage.

(Secs. 166-171)

166. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

When produce may be sold standing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land, by himself or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them

(3) In every case referred to in sub-section (2), the distress shall be made at least twenty days before the time when the crops or products or any part thereof would be fit for reaping or gathering.

167. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distress and sale, is satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Manner of sale.

168. If, on the property being put up for sale a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorized to act on his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Postponement of sale.

169. The price of every lot shall be paid at the time of sale or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Payment of purchase-money.

170. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and stating the price paid.

Certificate to be given to purchaser.

171. (1) From the proceeds of every sale of distrained property the officer holding the sale shall make a deduction at the rate of one anna in the rupee as a charge for the expenses of the sale, and shall send the amount to the Collector for credit to [the Provincial Government]¹.

Application of proceeds of sale.

(2) He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale required by section 161, to such amount as, after examination of the statement of expenses furnished by the distrainer, he may think proper to allow.

1. Substituted by the A. O. for "the Government".

(Secs. 172-177)

(3) The remainder shall be applied to the discharge of the arrear for which the distressment was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

Certain persons may not purchase.

Procedure where demand is paid before the sale.

172. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

173. (1) If at any time after a distressment has been made under this Chapter, and before the sale of the distressed property, the defaulter, or the owner of the distressed property, where he is not the defaulter, tenders payment of the amount specified in the demand served under section 156, with all costs which may have been incurred after the service of the demand, the distrainer shall receive such payment and shall grant a receipt for the same, and the distress shall forthwith be withdrawn.

(2) A receipt granted under this section to an owner of distressed property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distressment was made.

174. (1) When an inferior tenant, on his property being lawfully distressed under this Chapter for the default of a superior tenant, makes any payment under section 173, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on, until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under section 173 to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

175. When land is sub-let and any conflict arises under this Chapter between the superior landlord and an inferior tenant, the right of the superior

176. All officers referred to in section 160, sub-section (1), shall bring to the notice of the Collector any material irregularity committed by distrainers under colour of this Act.

177. If in any case, on proceeding to hold a sale of property, any such officer finds that the owner of the property has not received due notice of the distressment and intended sale, he shall postpone the

Amount paid by under-tenant for his lessor may be deducted from rent.

Conflict between rights of superior and inferior landlords. Report of irregularities.

Postpone-
ment of
sale where
no

(Sects. 178-182)

sale and report the case to the Collector; and the Collector shall direct the issue of another notice and proclamation of sale under section 161, or shall pass such other order as he may think proper.

178. When an officer referred to in section 160, sub-section (1), has proceeded to any place for the purpose of holding a sale, and no sale takes place, either—

Charge to be made for expenses when no sale takes place.

(a) for the reason stated in section 177, or

(b) because the demand of the distrainer has been previously satisfied, and no intimation of such satisfaction was given by the distrainer to the said officer,

a charge of one anna in the rupee shall be leviable on account of expenses, and shall be calculated on the estimated value of the distrained property :

Provided that such charge shall in no case exceed ten rupees.

179. (1) If the demand of the distrainer is not satisfied until the day fixed for the sale, the charge for expenses, referred to in section 171, sub-section (1), and section 178, shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

Charge for expenses by whom to be paid.

(2) In every other case the said charge shall be paid by the distrainer, and may be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector.

180. (1) All proceedings under this Chapter by officers referred to in section 160, sub-section (1), shall be subject to revision by the Collector.

Control by Collector.

(2) The Collector may, with the sanction of the Board of Revenue, direct any such officer to submit periodical reports of his proceedings under this Chapter.

181. (1) In all suits instituted to contest a demand of a distrainer, the distrainer must prove the arrear in the same manner as if he had himself brought a suit therefor.

Procedure in suit to contest demand of distrainer.

(2) If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favour of the distrainer.

182. (1) If, in any suit to contest the demand of a distrainer, the demand or any portion thereof is adjudged to be due, and if a bond has not been executed under section 163, the Collector shall send an order to the officer referred to in section 160, sub-section (1), authorizing the sale of the distrained property.

Sale of distrained property in execution of decree.

(Secs. 183-185)

(2) If the distrainer applies to the said officer, within five days from the receipt of such order, for the sale of the said property, such officer shall—

(a) send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the property, which shall not be less than five or more than ten days from the date of the proclamation, and

(b) deliver a copy of the proclamation to a peon, to be put up by him in the place where the property is deposited.

(3) Sub-section (2) of section 161 shall apply to the said proclamation.

(4) If, on the expiration of the period fixed in the said proclamation, the amount adjudged to be due and the costs of the restraint be not paid, the said officer shall proceed to sell the property or such part thereof as it may be necessary to sell in order to realise such amount and costs.

Further proceedings in execution of decree.

183. If, when a sale has been made in pursuance of section 182,
the amount due to the distrainer be recovered
the judgment.

Procedure where Collector considers distrain vexatious or groundless.

184. In any suit instituted to contest the demand of a distrainer, if the Collector considers that the restraint was made vexatiously or without sufficient grounds, he shall direct the release of the restrained property and may award to the plaintiff such damages as he thinks fit.

Suit by person claiming property distrained for rent due by another.

185. (1) If any person claims as his own property which has been distrained for arrears of rent alleged to be due from another person, he may institute a suit before the Collector against the distrainer and such other person, to try the right to the property; and the provisions of this Act as to suits to contest the demand of a distrainer shall, as far as may be, apply to such suit.

(2) When any such suit is instituted, the property may be released upon security being given up to the limit of the value of the property.

(3) If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

(4) If the claim is upheld, the Collector shall decree the release of the restrained property, with costs and such damages (if any) as he thinks fit.

(Secs. 186-189),

186. The right of a landlord to distrain property under this Chapter shall not be barred by—

- (a) any claim to such property, made by any other person, or
- (b) any order issued by any Court for the attachment or sale of such property :

Right of
distrain to
prevail over
other claims.

Provided that, when any such property is sold under this Chapter after an order for the attachment or sale thereof has been issued by any Court, the surplus proceeds of the sale shall not be paid under section 171 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

187. If, in any case in which property has been distrained for an arrear of rent and a suit has been instituted before the Collector to contest the claim to the property by or on behalf of such other person of the rent of t

Procedure if
distrainer's
right to dis-
train be dis-
puted.

the suit, and the question of the actual receipt of the rent by such other person before and up to the time of the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of the inquiry :

Provided that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court if instituted within one year from the date of that decision.

188. If any person, whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from instituting a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 161 or section 187, as the case may be, and if his property is in consequence brought to sale, he may institute a suit before the Collector, within three months from the date of the occurrence of the cause of action, to recover damages for the illegal distrainment and sale of his property.

Suit for
damages
by person
prevented
from suing
in time
to save his
property
from sale.

189. (1) In any of the following cases, namely :—

Suit for
damages
for wrong-
ful acts of
authorized
distrainer.

- (a) if any person authorized by this Chapter to distrain property makes any distrain or sale, or causes any sale to be made, otherwise than in accordance with the provisions of this Chapter, or

- (b) if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof; or

(Secs. 190-193)

(c) if a distressment is not immediately withdrawn as required by any provision of this Chapter,

the owner of the property may institute a suit before the Collector within three months from the date of the occurrence of the cause of action, to recover damages for any injury which he may have thereby sustained.

(2) If any illegal act is committed by any agent under colour of the exercise of the powers of distressment conferred by this Chapter, the person employing such agent shall be liable, as well as the agent himself, for any damages accruing by reason of such act.

190. If any person not authorized by this Chapter to distress property distresses or sells or causes to be sold any property under colour of this Chapter, the owner of the property, may institute a suit before the Collector, within three months from the date of the occurrence of the cause of action, to recover damages from such person for any injury which he may have thereby sustained;

and such damages may be awarded in addition to any penalty imposed in pursuance of section 240.

191. The [Provincial Government]¹ may make rules for regulating the procedure in all cases under this Chapter.

CHAPTER XIV

JUDICIAL PROCEDURE

Power to
modify Code
of Civil
Procedure in
its applica-
tion to
landlord and
tenant suits.

192. (1) The [Provincial Government]¹ * * * * ², may, by notification in the [Official Gazette]³, declare that any portions of the Code of Civil Procedure, 1908, which are not expressly made applicable by this Act shall not apply to suits and other proceedings in Revenue Courts, or shall apply to them with such modifications as the [Provincial Government]¹ * * * * ⁴ may prescribe.

(2) Subject to any notifications so issued, and subject also to the other provisions of this Act, the Code of Civil Procedure, 1908, shall apply to all such suits and other proceedings.

Certain suits
and applica-
tions
cognizable
only by the
Collector.

193. The following suits and applications shall be cognizable by the Collector, and shall be instituted and tried or heard under the provisions of this Act, and shall not be cognizable in any other Court except as provided in this Act, namely :—

(a) all suits and applications under any portion of this Act other than Chapter XI, and

1. Substituted by the A. O. for "L G".

2. The words "with the previous sanction of the Governor General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920), s. 2 and Sch. I.

4.

(Secs. 194-196)

(b) all suits, by landlords and others in receipt of the rent of land, against any agents employed by them in the management of land or the collection of rents, or against sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession.

194. The [Provincial Government]¹ may direct that all suits, or any specified class of suits, under this Act shall be registered, not in the register of civil suits kept under the Code of Civil Procedure, 1908, but in such other registers as it may prescribe.

Special regis-
ter of suits.

195. Subject to the provisions of rule 1 in Order XXIII in the first Schedule to the Code of Civil Procedure, 1908, where a landlord has instituted a suit against a tenant for the recovery of any rent of another suit against him until after three months from the date of the institution of the previous suit.

Successive
rent suits.

196. (1) The provisions of rule 3 in Order XXIII in the first Schedule to the Code of Civil Procedure, 1908, shall not apply to any suit under this Act.

Agreements
and compro-
mises.

(2) If any suit under this Act is adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfies the plaintiff in respect to the whole or any part of the matter of the suit, the Court shall pass a decree in accordance with such agreement, compromise or satisfaction, so far as it relates to the suit :

Provided that no decree shall be passed in accordance with any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(3) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Court shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 34 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(4) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise unless and until it is satisfied by evidence that the statements made by the parties thereto are correct.

*Illustration.—*A proprietor, agrees that B, his tenant, shall be recorded as an occupancy-raiyat : this affects the rights of the tenant, of B. The Court must, under sub-section (4), inquire whether B is a tenure-holder or a raiyat as defined in Chapter II. If the Court finds on the evidence that B is a raiyat, it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure-holder.

1. Substituted by the A. O. for "L. G".

(Secs. 197-198)

(5) A decree passed in accordance with any lawful agreement, compromise or satisfaction shall be final so far as it relates to so much of the subject-matter of the suit as is dealt with by such agreement, compromise or satisfaction.

Regard to
be had by
Courts to
entries in
record-of-
rights and
Land
Records.

197. In all areas for which a record-of-rights has been finally published under Chapter XI or under any other law for the time being in force, a Revenue Court shall, in all suits under this Act, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect ; and, when a Revenue Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Procedure in
rent suits.

198. The following rules shall apply to suits for the recovery of rent :—

(a) sections 68 to 72 of, and rules 1 to 13 in, Order XI and rule 83 in Order XXI in the first Schedule to, the Code of Civil Procedure, 1908, shall not apply to any such suit ;

(b) the plaint shall contain, in addition to the particulars specified in rules 1 to 6 in Order VII in the said Schedule, a statement of the situation, designation, extent and boundaries of the land held by the tenant ; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof, a description sufficient for identification ;

(c) where the suit is for the rent of land situated within an area for which a record-of-rights has been finally published under Chapter XI or under any other law for the time being in force, the plaint shall further contain—

(1) in the case of a holding—a statement of the plots, area and rental of the tenancy according to the record-of-rights, and

(2) in other cases—a description of the tenancy, sufficient to show the record-of-rights, the reasons to be recorded, was prevented by any sufficient cause from furnishing such statement or extract :

Provided that, in all cases in which the Court admits a plaint which does not contain a statement of the plots, area and rental of the tenancy according to the record-of-rights relating to the tenancy ;

(Sec. 198)

- (d) where an alteration has been made in the area of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed;
 - (e) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;
 - (f) the service of the summons may, if the [Provincial Government]¹ by rule, either generally, or specially for any local area, so directs, be effected by post, either in addition to, or in substitution for, any other mode of service;
 - (g) a written statement shall not be filed without the leave of the Court;
 - (h) the rules in rule 13 in Order XVIII in the first Schedule to the Code of Civil Procedure, 1908, for recording the evidence of witnesses shall apply, whether an appeal is allowed or not;
 - (i) when any account-books, rent-rolls, collection-papers, measurement-papers or maps have been produced by the landlord before any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, certified by a duly authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the landlord;
- and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals;
- (j) the Court may, when passing the decree, order, on the oral application of the decree-holder, the execution thereof, unless it is a decree for ejection for arrears;
 - (k) notwithstanding anything contained in rule 16 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree, unless the landlord's interest in the land has become and is vested in him.

1. Substituted by the A. O. for "L. G".

(Secs. 197-198)

(5) A decree passed in accordance with any lawful agreement, compromise or satisfaction shall be final so far as it relates to so much of the subject-matter of the suit as is dealt with by such agreement, compromise or satisfaction.

Regard to
be had by
Courts to
entries in
record-of-
rights and
Land
Records.

197. In all areas for which a record-of-rights has been finally published under Chapter XI or under any other law for the time being in force, a Revenue Court shall, in all suits under this Act, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Revenue Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Procedure in
rent suits.

198. The following rules shall apply to suits for the recovery of rent :—

(a) sections 68 to 72 of, and rules 1 to 13 in, Order XI and rule 83 in Order XXI in the first Schedule to, the Code of Civil Procedure, 1908, shall not apply to any such suit;

(b) the plaint shall contain, in addition to the particulars specified in rules 1 to 6 in Order VII in the said Schedule, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof, a description 'sufficient for' identification;

(c) where the suit is for the rent of land situated within an area for which a record-of-rights has been finally published under Chapter XI or under any other law for the time being in force, the plaint shall further contain—

(1) in the case of a holding—a statement of the plots, area and rental of the tenancy according to the record-of-rights, and

(2) in other cases—a description of the tenancy, sufficient for its identification, taken from the record-of-rights, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement or extract:

Provided that, in all cases in which the Court admits a plaint which does not contain such statement or description, the Court shall, and, in any other case, the Court may, require the Collector to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the suit.

(Sec. 198)

- (d) where an alteration has been made in the area of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed;
- (e) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;
- (f) the service of the summons may, if the [Provincial Government]¹ by rule, either generally, or specially for any local area, so directs, be effected by post, either in addition to, or in substitution for, any other mode of service;
- (g) a written statement shall not be filed without the leave of the Court;
- (h) the rules in rule 13 in Order XVIII in the first Schedule to the Code of Civil Procedure, 1908, for recording the evidence of witnesses shall apply, whether an appeal is allowed or not;
- (i) when any account-books, rent-rolls, collection-papers, measurement-papers or maps have been produced by the landlord before any Court, they may be admitted in evidence in a suit :
extracts from such authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the landlord;
- and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals;
- (j) the Court may, when passing the decree, order, on the oral application of the decree-holder, the execution thereof, unless it is a decree for ejectment for arrears;
- (k) notwithstanding anything contained in rule 16 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree, unless the landlord's interest in the land has become and is vested in him.

1. Substituted by the A. O. for "L. G".

(Secs. 199-202)

Suit by
co-sharer
landlord for
arrears of
rent.

199. Where a co-sharer landlord, who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct information on these points, or on either of them,

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent;

and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

Payment
into Court
of rent
admitted to
be due to
third person.

200. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person, and shall by the notice require him to appear before it on a specified date, and after taking evidence (if necessary) shall pass orders.

(3) If the plea is allowed, an order shall be made for payment to the third party, and, if it is not allowed, an order shall be made for payment to the plaintiff.

(Secs. 203-204)

203. When a defendant pays money into Court under section 200 or section 201, the Court shall give the defendant a receipt; and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

Court to
grant
receipt.

204. (1) Except where otherwise expressly provided in this Act, Appeals from an appeal from an order or decree passed under the Act shall lie in the following manner :—

Every order passed by a Collector, not being—

- (a) a judgment in a suit,
- (b) an order passed in the course of a suit and relating to the trial thereof, or
- (c) an order passed after decree and relating to the execution thereof,

shall be appealable—

- (i) to the Commissioner, or,
- (ii) if passed by a Deputy Collector exercising the powers of a Collector, to the Collector:

¹[Provided that no second appeal shall lie to the Commissioner from an order passed by the Collector under sub-clause (ii) of clause (c)].

(2) In suits where the subject-matter of the claim or dispute does not exceed one hundred rupees in value, and the judgment does not decide a question whether rent is payable for land or not, or a question relating to title to land or to some interest in land as between parties to the suit, the judgment of the Collector shall be final:

Provided that, if the suit be tried and decided by a Deputy Collector exercising the powers of a Collector, an appeal shall lie from the judgment of the Deputy Collector to the Collector.

(3) In suits other than those referred to in sub-section (2), an appeal from the judgment of the Collector or Deputy Collector shall lie to the District Judge, unless the amount or value in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court:

Provided that a second appeal shall lie to the High Court under Order XLII in the first Schedule to the Code of Civil Procedure, 1908, from any appellate decree passed by the District Judge under this section.

¹ Inserted by the Orissa Tenancy (Amendment) Act, 1947 (Orissa of 1947), s. 4.

(Secs. 199-202)

Suit by
co-sharer
landlord for
arrears of
rent.

199. Where a co-sharer landlord, who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct information on these points, or on either of them,

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent;

and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

Payment
into Court
of rent
admitted to
be due to
third person.

200. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person, and shall by the notice require him to appear before it on a specified date, and after taking evidence (if necessary) shall pass orders.

(3) If the plea is allowed, an order shall be made for payment to the third party, and, if it is not allowed, an order shall be made for payment to the plaintiff.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3), or to present an appeal under section 204.

Payment
into Court
of rent
admitted to
be due to
landlord.

the
is in
cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Provisions
as to
payment of
of

202. When a defendant is liable to pay money into Court under section 200 or section 201, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

(Secs. 203-204)

203. When a defendant pays money into Court under section 200 or section 201, the Court shall give the defendant a receipt; and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

Court to
grant
receipt.

204. (1) Except where otherwise expressly provided in this Act, Appeals, an appeal from an order or decree passed under the Act shall lie in the following manner :—

Every order passed by a Collector, not being—

- (a) a judgment in a suit,
- (b) an order passed in the course of a suit and relating to the trial thereof, or
- (c) an order passed after decree and relating to the execution thereof,

shall be appealable—

- (i) to the Commissioner, or,
- (ii) if passed by a Deputy Collector exercising the powers of a Collector, to the Collector:

¹[Provided that no second appeal shall lie to the Commissioner from an order passed by the Collector under sub-clause (ii) of clause (c)].

(2) In suits where the subject-matter of the claim or dispute does not exceed one hundred rupees in value, and the judgment does not decide a question whether rent is payable for land or not, or a question relating to title to land or to some interest in land as between parties to the suit, the judgment of the Collector shall be final:

Provided that, if the suit be tried and decided by a Deputy Collector exercising the powers of a Collector, an appeal shall lie from the judgment of the Deputy Collector to the Collector.

(3) In suits other than those referred to in sub-section (2), an appeal from the judgment of the Collector or Deputy Collector shall lie to the District Judge, unless the amount or value in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court :

Provided that a second appeal shall lie to the High Court under Order XLII in the first Schedule to the Code of Civil Procedure, 1908, from any appellate decree passed by the District Judge under this section.

¹ Inserted by the Orissa Tenancy (Amendment) Act, 1947 (Orissa Act XV of 1947), s. 4.

(Sect. 205.207)

(4) An appeal shall lie against any order specified in clause (b), or (c) of sub-section (1) (except an order which is not appealable under the Code of Civil Procedure, 1908) to the Court to which an appeal from the judgment in the suit would lie.

(5) Notwithstanding anything contained in this section, if it appears to the Collector that a collector has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and the Collector may pass such order as he thinks fit.

Explanation.—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties to the suit.

205. Every application for an order under rule 13 in Order IX in the first Schedule to the Code of Civil Procedure, 1908, to set aside a decree passed *ex parte*, or for a review of judgment, under section 114 of the said Code, in a suit under this Act, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment;

(a) and no such application shall be admitted—

(i) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or

(ii) (b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.

206. A decree for enhancement in a suit instituted under this Act, if passed shall ordinary agricultural year, the agricultural year next four months, and agricultural year, shall be instituted at the commencement of the agricultural year, notwithstanding nothing to the contrary.

for the ejectment of a tenant, on the ground—

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

Deposit
on applica-
tion to set
aside
ex parte
decree, or
for review
of judgment.

Date from
which decree
for enhance-
ment takes
effect.

Relief
last
turns.

(Sec. 208)

- (b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

208. The following rules shall apply in the case of every raiyat ejected from a holding :—

Rights of
ejected
raiyats in
respect of
crops and
land pre-
pared for
sowing.

- (a) when the raiyat has, before the date of his ejection, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejection;

- (b) when the raiyat has, before the date of his ejection,

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for sowing any land

THE ORISSA TENANCY ACT, 1913

[B. & O. Act]

(Secs. 209-270)

(c) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect therof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

(d) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

209. When a plaintiff institutes a suit in a Civil Court for the ejectment of a trespasser, he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land, in his possession a fair and equitable rent, to be determined by the Court; and the Court may grant such relief accordingly.

210. (1) Subject to the provisions of section 140, the Court having jurisdiction to determine a suit for the possession of land, determine all or any of the following matters, namely :—

- (a) the situation, quantity and boundaries of the land;
- (b) the name and description of the tenant thereof (if any);
- (c) the class to which he belongs, that is to say, whether he is a tenure-holder, *bazayastidar*, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, under-*raiyat* or *chandnadar*, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and continuance of his tenure; and
- (d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in the first Schedule to the Code of Civil Procedure, 1908, by such Revenue-officer as the [Provincial Government]¹ may authorise in that behalf by rule made under rule 9 in the said Order.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

1. Substituted by the A. O. for "L. G".

Power for
Court to fix
fair rent as
alternative
to eject-
ment.

Application
to determine
incidents of
tenancy.

(Sec. 211)

CHAPTER XV¹SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE
BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914.²

211. (1) Any landlord (other than the Government) whose land is situate in an area for which a record-of-rights has been prepared and finally published and in which such record is maintained, may apply to the [Provincial Government]³ through the Collector of the district in which his land is situate, for the application of the procedure prescribed by the Bihar and Orissa Public Demands Recovery Act, 1914,² to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.

Recovery of
arrears of
rent under
the certi-
ficate
procedure in
certain
areas.

(2) The [Provincial Government]³ may reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw⁴ its allowance of the application, without, in any of these cases, assigning any reason for its action.

Act
for the purpose of this section, to perform the functions of a Certificate-officer under the Bihar and Orissa Public Demands Recovery Act, 1914,² for the recovery of any arrears of rent which he alleges are due to him from any tenant.

370. (4) Every such requisition shall be signed and verified by the landlord making it, in the manner prescribed by rule 1 in Schedule II, to the said Act, as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870,⁵ in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

(5) On receipt of any such requisition, the said Revenue-officer may, in accordance with such rules as the [Provincial Government]³ may prescribe in this behalf, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due, and shall include in the certificate the fee paid under sub-section (4), and shall cause the certificate to be filed in his office :

1. This Chapter XV was substituted for the original Chapter XV by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act IV of 1914), s. 59 and Sch. III, Pt. II, printed post.

2. Bihar and Orissa Act IV of 1914, printed post.

3. Substituted by the A. O. for "L. G".

4. For notifications issued under this sub-section, see Orissa L. S. R. & O. Vol. I, Pt. VII.

5. Printed in Vol. I of this Code, see P. 362

THE ORISSA TENANCY ACT, 1913

[B. & O. Act]

(Sec. 211)

Provided that—

(a) no certificate shall be signed for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in a Revenue Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant, in respect of the period during which it is alleged in the requisition made under sub-section (3) that the arrears of rent sought to be recovered have accrued; and

(b) if, after the signing of a certificate, it is found that such a suit was instituted in a Revenue Court before the certificate was signed, such certificate shall be cancelled.

(c) The person in whose favour any certificate is signed under sub-section (5) shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate-officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost and responsibility, and not otherwise.

(7) The Bihar and Orissa Public Demands Recovery Act, 1914,¹ shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under sub-section (5).

(8) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Revenue Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3);

and, subject to the provisions of section 43 of the Bihar and Orissa Public Demands Recovery Act, 1914,¹ no tenant shall, after the signing of any certificate against him under sub-section (5) of this section, institute a suit in, or apply to, a Revenue Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was signed have accrued.

(9) The word 'landlord' in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collects his or their share or shares of the rent separately; and, where a Revenue-officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate.

¹ Bihar and Orissa Act IV of 1914, printed post.

CHAPTER XVI

SALE FOR ARREARS UNDER DECREE

212.¹ [(1) Where a tenure or holding is sold in execution of—

- (a) a decree for arrears of rent due in respect thereof, or
- (b) a decree for damages under section 186A, or
- (c) a certificate for arrears of rent signed under the Bihar and

Passing of
tenure or
holding
sold in
execution
of decree.

Orissa Public Demands Recovery Act, 1914²,

the tenure or holding shall, subject to the provisions of section 28,
pass to the purchaser,

if such decree was obtained by—

- (i) a sole landlord, or
- (ii) the entire body of landlords, or
- (iii) one or more co-sharer landlords who has, or have, sued
for the rent due to all the co-sharers in respect of the
entire tenure or holding and made all the remaining
co-sharers parties defendant to the suit, or

if such certificate was signed on the requisition of, or in favour of, a sole
landlord or the entire body of landlords].

(2) When one or more co-sharer landlords, having obtained a
decree referred to in sub-section (1) or a decree in a suit framed
under section 199, applies, or apply, for the execution of the decree
by the sale of the tenure or holding, the Court shall, before proceeding
to sell the tenure or holding, give notice of the application for execu-
tion to the other co-sharers.

213. Where a tenure or holding is sold in execution of a decree
for arrears due in respect thereof, the purchaser shall take subject
to the interests defined in this Chapter as "protected interests," but
with power to annul the interests defined in this Chapter as
"incumbrances":

General
powers of
purchaser
to avoidan-
ce of incum-
brances.

Provided as follows :—

- (a) a registered and notified incumbrance within the meaning
of this Chapter shall not be so annulled, except in the
case hereinafter mentioned in that behalf;
- (b) the power to annul shall be exercisable only in manner
by this Chapter directed.

1. This sub-section (1) was substituted for the original sub-section (1) by
the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act IV of
1914), s. 69 and Sch. III, Pt. II.

2. Bihar and Orissa Act IV of 1914, printed post.

protected
interests.

(Sects. 214-215)

214. The following shall be deemed to be protected interests within the meaning of this Chapter :—

- (a) any under-tenure existing from the time of the Permanent Settlement ;
- (b) any sub-proprietary interest, baziashi tenancy or under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement ;
- (c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying-grounds have been made ;
- (d) any right of occupancy ;
- (e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI, or under Chapter XI ;
- (f) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; and
- (g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

215. For the purposes of this Chapter,—

- (a) the term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in section 214 ;
- (b) the term "registered and notified incumbrance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided ;
- (c) the terms "arrears" and "arrear of rent" shall be deemed to include interest decreed under section 76 or damages awarded in lieu of interest under sub-section (1) of section 77.

eaning of
incum-
brance" and
registered
and
notified
incum-
brance"

(Sects. 216-217)

When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies, under sub-rule (2) of rule 11 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908, for the attachment and sale of the tenure or holding in execution of the decree he shall produce a statement showing the pargana, estate and village or holding is situate, the total amount recoverable under the decree.

Application
for sale of
tenure or
holding.

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in section 216, the Court shall, if under rule 17 in Order XXI in the first Schedule to the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by rule 66 in the said Order.

Order of
attachment
and procla-
mation of
sale to be
issued
simulta-
neously.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in rule 66 in the said Order, announce—

(a) in the case of a tenure, or a holding of a raiyat holding at fixed rates or of a *bazyaftidar*, that the tenure or holding will first be put up to auction subject to the

that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(b) in the case of an occupancy-holding, not being the holding of a *bazyaftidar*, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner required by rule 67 in the said Order, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the [Board of Revenue]¹ may direct in this behalf.

(4) Notwithstanding anything contained in rule 68 in the said Order, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed upon the land comprised in the tenure or holding ordered to be sold.

1. The words "Board of Revenue" were substituted for the words "Local Government" by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act III of 1916), printed post.

The functions of the Board of Revenue are discharged by the Revenue Commissioner, Orissa, see Orissa L. S. R. & O., Vol. II, p. 344.

(Secs. 218-221)

Sale of
tenure or
holding
subject
to registered
and notified
incum-
brances,
and effect
thereof.

218. (1) When a tenure or a holding at fixed rates or a holding of a *bazayastidar* has been advertised for sale under section 217, it shall be put up to auction and sold with power to avoid all incumbrances; the amount of the purchase-money shall be paid to the decree-holder and the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 221, and not otherwise, annul any incumbrance upon the tenure or holding, not being a registered and notified incumbrance.

Sale of
tenure or
holding
with power
to avoid
all incum-
brances, and
effect
thereof.

219. (1) If the bidding for a tenure or a holding at fixed rates or a holding of a *bazayastidar* put up to auction under section 218 does not reach a sum sufficient to liquidate the amount of the decree and the decree-holder therupon desires that the power to avoid all incumbrances, the adjourn the sale and make a fresh proclamation under rule 67 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908, announcing that the tenure or holding will be put up to auction and sold, with power to avoid all incumbrances, upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 221, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of
occupancy-
holding with
power to
avoid all
incum-
brances and
effect
thereof.

220. (1) When an occupancy-holding, not being the holding of a *bazayastidar*, has been advertised for sale under section 217, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 221, and not otherwise, annul any incumbrance on the holding.

Procedure
for annulling
incum-
brances
under the
foregoing
sections.

221. (1) A purchaser having power to annul an incumbrance under any of the Public Demands may, within one month of the first notice of the incumbrance, whichever is later, present to the Collector an application, in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

^{B. & O.}
^{IV of 1914}
1. Inserted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act IV of 1914), s. 60 and Sch. III, Pt. II, printed post.

(Secs. 222-223)

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree [or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914,¹] for arrears due in respect thereof, and there is no provision in the decree for the sale of the land in the kind specified in the decree, the Court may exercise its power under section 222 of this Chapter to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

222. (1) The [Provincial Government]² may, by notification in the [official Gazette],³ direct that occupancy-holdings or any specified class of occupancy-holdings, in any local area, which are put up for sale in execution of a decree for an arrear of rent due on them, shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

^{1908.} In disposing of the proceeds of a sale under this Chapter, we treated in all respects as if they were tenures.

(3) Nothing in sub-sections (1) and (2) shall apply to the holdings of bazaarsidars.

223. (1) In disposing of the proceeds of a sale under this Chapter, the following rules, instead of those prescribed by section 73 of the Code of Civil Procedure, 1908, shall be observed, that is to say—

Rules for disposal of the sale proceeds.

(a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

1. Inserted by the Bihar and Orissa Public Demands Recovery Act, 1914.

(B & O. Act IV of 1914), s. 69 and Sch. III, Pt. II, printed post,

2. Inserted by *ibid.*

3. Substituted by the A. O. for "L. G".

4. Substituted by the A. O. for "L. o. G".

(Sec. 224)

- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;
- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application:

Provided that, where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit framed under section 199 or a decree referred to in sub-section (1) of section 212,—

- (i) payment of the amount due under such decree shall, notwithstanding anything contained in clause (b), be made to the decree-holder and to the other co-sharer landlords in proportion to the amount found to be due to each, and

- (ii) if there remains a balance, payment of any rent which may have fallen due in respect of the tenure or holding between the institution of the suit and the date of the sale shall, notwithstanding anything contained in clause (c), but subject to the determination, in the manner and with the effect mentioned in sub-section (2), of any dispute as to their respective rights to receive such rent, be made to the said decree-holder and the other co-sharer landlords in proportion to their respective shares in the tenure or holding.

- (2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c) of sub-section (1), or the amount of any payment contemplated by proviso (i) or proviso (ii) to the said sub-section, the Court shall determine the dispute, and the determination shall have the force of a decree.

224. (1) Rules 55 to 63 and 89 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908, shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

- (2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs of the decree, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

Tenure or holding to be released from attachment only on payment into Court of amount of decree, with costs, on confirmation of decree.

(Secs. 225-226)

(3) The judgment-debtor, or any person having in the tenure or holding any interest voidable on the sale, may pay money into Court under this section.

225. (1) When any person having, in a tenure or holding advertised for sale under this Chapter, [or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914,]¹ an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

Amount paid into Court to prevent sale to be, in certain cases, a mortgage-dbt on the tenure or holding

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve and-a-half per centum per annum and secured by a mortgage of the tenure or holding to him;
- (b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and
- (c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

226. ² [When a tenure or holding is advertised for sale—

Inferior tenant paying into Court may deduct from rent.

- (a) under this Chapter, in execution of a decree against a superior tenant defaulting, or
- (b) in execution of a certificate, signed under the Bihar and Orissa Public Demands Recovery Act, 1914, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting.]

and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him defaulting any rent the defaulter is reached.

1. Inserted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act IV of 1914), s. 69, Sch. III, Pt. II, printed post.

2. Substituted by *ibid.*

THE ORISSA TENANCY ACT, 1913
(Secs. 227-228)

[B. & O. Act]

Decrees.
holder may
bid at sale;
judgment-debtor may
not.

227. (1) Notwithstanding anything contained in rule 72 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908, the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale; and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

Application
by judg-
ment-debtor
to set aside

¹ [228.] (1) Rules 89 and 90 of Order XXI in the First Schedule to the Code of Civil Procedure, 1908, shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing—

- (a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs;
- (b) for payment to the auction-purchaser, as penalty a sum equal to five per cent of the purchase money, but not less than one rupee.

(2) Where a tenure or holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor or any person whose interests are affected by the sale, may, at any time within three months from the date of the sale, apply to the Court to set aside the sale, on the ground of a material irregularity or fraud in publishing or conducting the sale:

Provided as follows:—

- (a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud; and

¹. Substituted by the Orissa Tenancy (Amendment) Act, 1917 (Orissa Act XV of 1917), s. 5.

(Sec. 228-A)

(b) no application made by a judgment-debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court for reasons to be recorded by it in writing, that no such deposit is necessary.

(3) Where a person makes an application under sub-section (2) for setting aside the sale of his tenure or holding, he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under sub-section (1).

(4) Rule 91 of Order XXI in the First Schedule to the Code of Civil Procedure, 1908, shall not apply to any sale under this Chapter.

(5) An appeal shall lie against an order setting aside or refusing to set aside sale :

Provided that where the Court has refused to set aside the sale on the application of the judgment-debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the appellant deposits such amount in Court.]

¹[228-A. (1) Where no application is made under sub-section (1) of section 228 within thirty days from the date of sale or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

Sale when
to become
absolutes or
be set aside,
and return
of purchase
money in
certain
cases.

(2) Where such application is made and allowed, and where in the case of an application under sub-section (1) of section 228 the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its re-payment with or without interest as the Court may direct.

(4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

1. Inserted by the Orissa Tenancy (Amendment) Act, 1947 (Orissa Act XV of 1947), s. 6.

(5) Notwithstanding anything contained in this section, an application may be made under sub-section (2) of section 228 to set aside the sale, and where such application is allowed the order made under sub-section (1) confirming the sale shall be deemed to be cancelled.]

Registration
of certain
instruments
creating
incum-
brances.

Notifications
of incum-
brances to
landlord.

Power to
create in-
cumbrances
not
extended.

Restrictions
on exclusion
of Act by
agreement.

229. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1908¹, an instrument creating an incumbrance upon any tenure or holding, which has been executed before the commencement of this Act and is not required by section 17 of the said Registration Act² to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

230. Every officer who has, whether before or after the commencement of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the [Provincial Government]² may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

231. Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XVII

CONTRACT AND CUSTOM

232. (1) Nothing in any contract between a landlord and a tenant, whether made before or after the commencement of this Act,—

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

1. Printed in Central Acts, Vol. V, P. 433.
2. Substituted by the A. O. for "L. G".

(Sec. 232)

(2) Nothing in any contract made between a landlord and a tenant within a period of six years immediately preceding the commencement of this Act, shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the commencement of this Act shall—

- (a) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land;
- (b) take away or limit the right of an occupancy-raiyat to use land as provided by [Sections 27 and 27-A]¹;
- (c) take away the right of a raiyat to surrender his holding in accordance with section 97;
- (d) take away the right of a raiyat to transfer or bequeath his holding in accordance with custom or local usage;
- (e) take away the right of an occupancy-raiyat to sub-let subject to, and in accordance with, the provisions of this Act;
- (f) take away the right of a raiyat to apply for a reduction of rent under section 45 or section 60;
- (g) take away the right of a landlord or an occupancy-raiyat to apply for a commutation of rent under section 47; or
- (h) affect the provisions of section 76, relating to interest payable on arrears of money-rent:

Provided as follows :—

- (i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;
- (ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;

¹. Substituted by the Orissa Tenancy (Amendment) Act, 1938, (Act VIII of 1938), s. 16, for "section 27".

(Sects. 233-235)

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of horticultural or orchard land with agricultural crops.

Explanation.—The expression "horticultural land," as used in proviso (iii), means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used bona fide for the cultivation of flowers or vegetables or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not primarily for profit or sale.

233. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

234. (1) Notwithstanding anything in this Act, a raiyat—

(a) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom, or custom and for the time being let under that custom,

(b) who holds land of the kind known as *char* or *diara*, shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of *utbandi* and for the time being held under that custom, or

in case (b), in the *char* or *diara* land, until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of *utbandi* in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant, or on a reference from the Revenue Court, declare that any land has ceased to be *char* or *diara* land within the meaning of this section; and thereupon all the provisions of this Act shall apply to the land.

235. [Subject to the provisions of sub-section (1) of the next succeeding section], nothing in this Act shall affect any incident of a *ghatculari* or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the commencement of this Act, was not capable of being transferred or bequeathed.

(Secs. 236-237)

¹ [(1) Notwithstanding anything in this Act, the incidents of tenancy of any tenant, including the holder of a service tenure, in respect of the homestead in which such tenant ordinarily resides, shall be regulated by the provisions of this Act applicable to land held by an occupancy raiyat : Homesteads.

Provided that when a homestead is held as a service tenure or a part thereof and the holder of such tenure ceases to perform the service, he shall be liable to pay such rent for the occupation of the homestead as may be determined by the Collector on an application filed either by the landlord or by the holder of such tenure.]

²[Explanation.—A *Chandnadar* is also a tenant within the meaning of this sub-section.]

³ [(2) Save as otherwise expressly provided in this Act the incidents of tenancy of a *Chandnadar* in respect of that portion of his land which is not the homestead in which he ordinarily resides, shall be regulated by local custom or usage and his rent shall be liable to re-assessment on each revision of a land-revenue settlement.]

237. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of
custom.*Illustrations*

(1) The custom or usage whereby the right of a non-occupancy raiyat is heritable is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

1. Substituted by the Orissa Tenancy (Amendment) Act, 1946 (Orissa Act X of 1946), s 3 for the original sub-section (1) which read as follows :—

"(1) When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat."

The new section 236 (1) shall apply to the pending suits for ejectment of any tenant or to any execution proceeding arising therefrom (*see s 4 ibid*).

2. Inserted by the Orissa Tenancy (2nd Amendment) Act, 1947 (Orissa Act XXXIII of 1947), s 2 (i).

This explanation shall be deemed always to have been added to s. 236 (1).

3. Substituted by *sibid*, s. 2 (ii) for the original sub-section (2) which read as follows :—

"(2) Save as otherwise expressly provided in this Act, the incidents of the tenancy of a *chandnadar* shall be regulated by local custom or usage, and his rent shall be liable to re-assessment on each revision of a land-revenue settlement."

(Secs. 238-240)

[(2) The custom or usage, that an under-ralyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.]

CHAPTER XVIII

LIMITATION

Limitation
in suits,
appeals and
applications
in Schedule
III.

238. (1) The suits, appeals and applications specified in Schedule III shall be instituted and made within the time prescribed in that Schedule for them respectively ; and every such suit or appeal instituted, or application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

suit or
barred
would have been
made immediately
before the commencement of this Act.

Portions of
the Indian
Limitation
Act not
applicable to
such suits,
etc.

239. (1) Sections 6 to 9 of the Indian Limitation Act, 1908,¹ shall not apply to the suits and applications mentioned in section 238.

(2) Subject to the provisions of this Chapter, the provisions of the Indian Limitation Act, 1908, shall not apply to all suits, appeals etc., and applications :—

CHAPTER XIX

SUPPLEMENTAL

Penalties

Penalties.
240. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(a) distrains or attempts to distrain the produce of a tenant's holding, or

(b) resists a distressment duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

¹. Illustration (2) has been omitted and Illustration (3) renumbered as "(2)" by the Orissa Tenancy (Amendment) Act, 1933 (Orissa Act VIII, of 1933), s. 17.

(Sects. 241-243)

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

(2) Any person who abets, within the meaning of the Indian Penal Code, the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Damages for denial of Landlord's title

241. (1) When, in any suit under this Act, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(2) The amount of damages decreed under sub-section (1), together with any interest falling due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money or, subject to the provisions of section 212, in any of the modes in which a decree for rent may be executed.

Agents and representatives of landlords

242. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord or his agent, or authorizing an agent, shall be signed or certified by the landlord or by the agent authorized in

243. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Damages for denial of landlord's title

Power of landlord to act through agent

Joint landlords
collectively
or by

Procedure in
suits by
joint
landlord.

244. Notwithstanding anything contained in this Act, every suit under this Act instituted by—
 (a) a sole landlord,
 (b) the entire body of landlords, or
 (c) one or more co-share landlords,
 shall be subject to the provisions of sections 192 to 194;
 and to every decree referred to in sub-section (1) of section 212,
 of Chapter XVI shall, so far as may be practicable, be applicable.

Rules under the Act

245. The Provincial Government ¹ may, by notification in the *Official Gazette*, make rules—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed, or the exercise of any power conferred, upon them by or under this Act, and may by such rules confer upon any such officer—

- (a) any power exercised by a Civil Court in the trial of suits;
- (b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, ^{Bas. of 1854} 1875; and
- (c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil;

(2) to prescribe the officers to whom applications should be made under section 160 for the sale of crops or products distrained under Chapter XIII, and

(3) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is prescribed by this or any other Act.

246. All powers conferred by this Act for making rules are subject to the condition that the rules be made after previous publication ⁵.

1. Substituted by the A. O. for "L. G".

2. See Orissa L. S. R. & O., Vol II, pt. VII.

3. Substituted by the A. O. for "L. o. G".

4. Printed in Vol. II of this Code, p 121.

5. As to the procedure for previous publication, see s. 26 of the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act I of 1917), printed post

(Sects. 247-249)

Provisions as to temporarily-settled districts

247. Where the area comprised in a tenancy is situated in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the land-revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement proceedings by a revenue-authority empowered by the Government to make definitively or confirm settlements.

Saving as to tenancies held in estates which have never been permanently settled.

248. When a landlord grants a lease, or makes, any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

Power to alter rent in case of new assessment of land-revenue

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, or of his own motion, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

249. (1) Whenever from any cause the payment of the whole or any part of the land-revenue payable in respect of any land, not included in an area which has been permanently settled, is remitted or suspended, a Revenue-officer may, by general or special order, remit or suspend, as the case may be, the payment of the rent of that land to an amount which may bear the same proportion to the whole of the rent payable in respect of the land as the land-revenue of which the payment has been remitted or suspended bears to the whole of the land-revenue payable in respect of the land, and may distribute the amount so remitted or suspended amongst the tenants holding such land as may seem to him to be equitable, having regard to the effect on their tenures or holdings of the cause which has led to the remission or suspension of the land-revenue :

Remission and suspension of rent.

Provided that, where the rent is taken by actual division of the produce, no portion of it shall be suspended under this section.

(2) An order passed under sub-section (1) shall not be liable to be contested by suit in any Court.

(3) No suit shall lie for the recovery of any rent of which the period of suspension, of remitted; and, so long as payable.

(Secs. 250-252)

(4) Where the payment of rent has been suspended, the period of suspension shall be excluded in the computation of the period of limitation provided for bringing a suit for the recovery of the rent.

(5) The provisions of this section relating to the remission and suspension of the payment of rent may be applied, as far as may be, to land of which the land-revenue has been wholly or in part released, compounded for or redeemed, in any case in which, if the land-revenue in respect of the land had not been released, compounded for or redeemed, the whole or any part of it might, in the opinion of the Revenue-officer, have been remitted or suspended.

Recovery of certain dues

Recovery of
certain dues.

250. The provisions of this Act applicable to arrears of rent and suits and proceedings for the recovery thereof, shall, as far as may be, apply to anything payable or deliverable in respect of—
 (a) any sub-proprietary interest,
 (b) any *nij-jote, khamar, khudkast* or *nij-chas* land held by co-sharers;
 (c) any land held by co-sharers, under the provisions of sub-sections (2) and (3) of section 26;
 (d) any rights of pasture, forest rights, rights over fisheries and the like; and
 (e) any registration fees prescribed in sections 14, 15, [16 or 31-B].¹

Saving for conditions binding on landlords

Tenant not
enabled by
Act to
violate
conditions
binding on
landlord.

251. Where a proprietor, sub-proprietor or permanent tenure-holder holds his estate, sub-proprietory interest or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate, sub-proprietory interest or tenure to do any act which involves a violation of that rule or condition.

Savings for special enactments

252. Nothing in this Act shall affect—

(a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

¹. Substituted by the Orissa Tenancy (Second Amendment) Act, 1914 (Orissa Act IV of 1914), s. 3 for "or 16". This Amendment shall have retrospective effect on and from the 1st November 1939, see s. 4 *ibid.*

The figures, word and letter "31 and 31-A" were omitted and before the figures "16" the word "or" was ins. by the Orissa Tenancy (Amendment) Act, 1939 (Orissa Act VIII of 1938), s. 19.

Savings for
special
enactments.

(Sec. 252)

- (b) any enactment regulating the procedure for the realisation of rents in estates belonging to the [Crown]¹ or under the management of the Court of Wards or of the Revenue-authorities;
- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;
- (d) any enactment relating to the partition of revenue-paying estates;
- (e) any enactment relating to *patti* tenures, in so far as it relates to those tenures; or
- (f) any other special or local law not repealed either expressly or by necessary implication by this Act.

1. Substituted by the A. O. for "Government".

(Schedule II)

SCHEDULE II

FORMS OF RECEIPT AND ACCOUNT

(See sections 65 and 66)

THE ORISSA TENANCY ACT, 1913

[B. & O. Act]

(Schedule I)

SCHEDULE I

ENACTMENTS REPEALED

(See section 2)

1 Number and year	2 SHORT TITLE	3 Extent of repeal
VIII of 1793	PART I— <i>Bengal Regulations</i> The Bengal Decennial Settlement Regulation, 1793.	Sections 51, 52, 53, 54, 55, 61 and 65, and so much of section 34 as relates to kanungos.
V of 1812	The Bengal Land-revenue Sales Regulation, 1812.	Sections 2, 3, 4, 26 and 27.
VII of 1822	The Bengal Land-revenue Settlement Regulation, 1822.	Section 33, clause Third.
XI of 1825	The Bengal Alluvion and Diluvion Regulation, 1825.	In clause 1 of section 4, from the words "nor, if annexed to a subordinate ten-ure" to the end of the clause.
XIII of 1825	The Bengal Land-revenue Settlement (Resumed Kanungos and Revenue-free Lands) Regulation, 1825.	Sections 2 and 3.
X of 1859	PART II— <i>Acts of the [Governor-General of India in Council]</i>	
VIII of 1855	The Bengal Rent Act, 1850	" The whole.
VI of 1862	The Bengal Tenancy Act, 1855	" The whole.
VIII of 1865	PART III— <i>Bengal Acts</i> , The Bengal Rent Act, 1862	" The whole.
IV of 1867	The Bengal Rent Recovery (Under-tenures) Act, 1865.	" The whole.
VIII of 1879	The Bengal Rent (Appeals) Act, 1867	The whole, excepting section 3.
III of 1893	The Bengal Rent Settlement Act, 1879	The whole.
I of 1907	The Bengal Tenancy (Amendment) Act, 1893.	The whole.
	The Bengal Tenancy (Amendment) Act, 1907.	The whole.
1. Shall stand unmodified (see A. O.).		

(Schedule II)

SCHEDULE II

FORM OF RECEIPT AND ACCOUNT

(See sections 65 and 66)

FORM OF RECEIPT (LANDLORD'S PORTION)			
Name of village _____	Receipt No. _____	Name of tenant _____	
Taxi No. _____	Name of landlord _____	Paying money rent, _____	
Paying money rent, Area of tenancy _____	Paying produce rent, Area of tenancy _____		
REMARKS			
—	Year Money rent	Road and Public Works Grasses	Quality (if more than one, muriats, intents, etc.)
		Rs. A. P.	Rs. A. P.
Annual demand			
Arrears of			
Total demand			

Details of payment			
Amount paid for	Year	Kist	Date of payment
Ditto "			
Ditto "			
Total paid			

By whom paid	Signature of landlord		
Date of payment	Year	Kist	Date of payment
Amount paid for			
Ditto "			
Ditto "			
Total paid			

By whom paid _____ Signature of landlord _____
or his agent _____

NOTES.—1. When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited; and the payment shall be credited accordingly.

2. If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit (see section 64 of the Orissa Tenancy Act, 1913).

3. Arrear, current, and advance payments should be separately under the details of payment, thus—

1207 (arrear),

1303 (current),

1309 (advance).

A separate receipt should be given for each to tenure or holding.

FORM OF RECEIPT (TENANT'S PORTION)			
Name of village _____	Receipt No. _____	Name of tenant _____	
Taxi No. _____	Name of landlord _____	Paying money rent, _____	
Paying money rent, Area of tenancy _____	Paying produce rent, Area of tenancy _____		
REMARKS			
—	Year Money rent	Road and Public Works Grasses	Quality (if more than one, muriats, intents, etc.)
		Rs. A. P.	Rs. A. P.
Annual demand			
Arrears of			
Total demand			
Details of payment			
Amount paid for	Year	Kist	Date of payment
Ditto "			
Ditto "			
Total paid			

Details of payment			
Amount paid for	Year	Kist	Date of payment
Ditto "			
Ditto "			
Total paid			

By whom paid _____ Signature of tenant _____
or his agent _____

NOTES.—1. When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited; and the payment shall be credited accordingly.

2. If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit (see section 64 of the Orissa Tenancy Act, 1913).

3. Arrear, current, and advance payments should be shown separately under the details of payment, thus—
1307 (arrear),
1303 (current),
1309 (advance).

4. A separate receipt should be given for each separate tenure or holding.

THE ORISSA TENANCY ACT, 1913
(Schedule II)

[B. & O. Act]

FORM OF ACCOUNT

1. Year
2. Tenant's name
3. Particulars of holding (area, rent, etc.)—

Nalди
Government Coven
Acres. Rate, Rs. a. p.

Jalkar
Bankar
Phalkar
Maunds, Rs. a. p.

Bhaoali
Jalkar
Bankar
Phalkar
Maunds, Rs. a. p.

5. Balance of former years (Balanya)
Maunds, Rs. a. p.

6. Total demand (current and arrear) of
7. Paid each on account of
8. Paid in kind
Current demand, Arrear demand, Maunds, Rs. a. p.

9. Balance outstanding at end of year
Signature of the Landlord or his authorized Agent, Maunds, Rs. a. p.

10. Balance outstanding at end of year
Signature of the Landlord or his authorized Agent, Maunds, Rs. a. p.

FORM OF ACCOUNT

1. Year
2. Tenant's name
3. Particulars of holding (area, rent, etc.)—

Nalди
Government Coven
Acres. Rate, Rs. a. p.

Nalди
Government Coven
Acres. Rate, Rs. a. p.

Bhaoali
Jalkar
Bankar
Phalkar
Maunds, Rs. a. p.

4. Demand of the year
Maunds, Rs. a. p.

5. Balance of former years (Balanya)
Maunds, Rs. a. p.

6. Total demand (current and arrear)
Maunds, Rs. a. p.

7. Paid each on account of
8. Paid in kind
Current demand, Arrear demand, Maunds, Rs. a. p.

9. Balance outstanding at end of year
Signature of the Landlord or his authorized Agent, Maunds, Rs. a. p.

(Schedule III)

SCHEDULE III

LIMITATION

(See section 234)

Description of suit, appeal or application	Period of limitation	Time from which period begins to run
<i>PART I.—Suits</i>		
1. (1) To eject any tenanted holder or tenant on account of any breach of a condition in respect of which there is a contract expressly providing that reversion shall be the penalty of such breach.	One year	• The date of the breach
(2) To eject a non-occupant tenant on the ground of the expiration of the term of his lease.	Six months	• The expiration of the term
2. For the recovery of an arrear of rent, in a suit brought by— (1) a sole landlord, (2) the entire body of landlords, or (3) one or more co-share landlords,—		
(a) when the arrear fell due before a deposit was made under section 70 on account of the rent of the same holding.	Six months	• The date of the service of notice of the deposit.
(b) In other cases— (i) where money-rent is paid (ii) where rent is paid in kind,	Three years One year	• The last day of the agricultural year in which the arrear fell due. • Ditto
3. To recover possession of land claimed by the plaintiff as a salant or an under-salant.	Two years	• The date of dispossession
4. Under section 103 (b) of this Act.	Two years	• The date of the determination of the agency.

THE ORISSA TENANCY ACT, 1913 [B. & O. ACT II OF 1913]

(Schedule III)

Description of suit, appeal or application	Period of limitation	Time from which period begins to run
6. From any decree or order under any portion of this Act except Chapter XI, to the Collector,	Thirty days	(1) The date of the decree or order appealed against.
6. From any decree or order under this Act, to the Court of a District Judge or Special Judge	Thirty days	(2) The date of the decree or order appealed against.
7. From any decree or order of a Collector under this Act, to the Commissioner,	Thirty days	(3) The date of the decree or order appealed against.
8. For the execution of a decree or order made in a suit under this Act or any enactment repealed by this Act, not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the Provisions of the Indian Limitation Act, 1908.	Three years	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

BIHAR AND ORISSA ACT III OF 1914
(THE JHARIA WATER-SUPPLY ACT, 1914)

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BIHAR AND ORISSA ACT III OF 1914
[THE JHARIA WATER-SUPPLY ACT, 1914]

[10th June, 1914]

An Act to enable the provision of a Supply of water for the Jharia Coal Fields

Whereas it is expedient that provision should be made for the construction and maintenance of waterworks and for the supply of water for domestic purposes to the Jharia Coal Fields;

And whereas it is expedient that a Water Board should be constituted and invested with special powers for carrying out the objects of this Act;

It is hereby enacted as follows:—

CHAPTER I
PRELIMINARY

1. (1) This Act may be called the Jharia Water-supply Act, 1914;

(2) It shall come into force on such day as the [Provincial Government]¹ may, by notification, direct.²

(3) It extends to the coal-bearing area included within the Jharia, Katras and Nawaghlar parganas in the district of Manbhumi,

Short title,
commencement
and extent.

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons of the Act, see the *Bihar and Orissa Gazette*, 1914, Pt. VIII, p. 14; for Report of the Select Committee, see *ibid.*, Pt. V, pp. 55-57; for Proceedings in Council *see ibid.*, Pt. VI, pp. 35, 319.

[For Statement of Objects and Reasons of the Jharia Water-supply (Amendment) Act, 1919, see the *Bihar and Orissa Gazette*, 1919, Pt. V, p. 20; for Proceedings in Council, see *ibid.*, Pt. VI, p. 429. For Statement of Objects and Reasons of the Jharia Water-supply (Amendment) Act, 1921, see the *Bihar and Orissa Gazette*, 1921, Pt. V, p. 7; for Proceedings in Council, see *Bihar and Orissa Legislative Council Debates*, 1921, Vol. II, p. 256. For Statement of Objects and Reasons of the Jharia Water-supply (Amendment) Act, 1923, see the *Bihar and Orissa Gazette*, 1923, Pt. V, p. 39; for Proceedings in Council, see *Bihar and Orissa Legislative Council Debates*, 1923, Vol. VII, p. 1510. For Statement of Objects and Reasons of the Jharia Water-supply (Amendment) Act, 1925, see the *Bihar and Orissa Gazette*, 1925, Pt. V, p. 14; for the Report of Select Committee, see *ibid.*, Pt. V, p. 48, and for Proceedings in Council, see *Bihar and Orissa Legislative Council Debates*, 1925, Vol. XI, pp. 54, 476, 1566.]

2. Substituted by the A. O. for "L. G."

3. This Act is not in force in Orissa

and to those portions of the districts of Hazaribagh and Manbhumi, to which the [Provincial Government]¹ may by notification declare such extension to be necessary for the purpose of carrying out the objects of this Act.

(4) The [Provincial Government]¹ may from time to time, by notification, extend² this Act subject to such modifications and restrictions as may be necessary, to any other district or portion of a district.

³ [(5) The [Provincial Government]¹ may from time to time, by notification, withdraw this Act from any area to which it extends by its own operation, or to which it has been extended by notification.]

Definitions.

2. In this Act, unless there be anything repugnant in the subject or context—

(a) “Area of supply” means the area to which this Act extends;

(b) “The Board” means the Jharia Water Board established under this Act;

(c) “Mine” and “Owner of a mine” have the same meaning as in section 3 of the Indian Mines Act, 1901⁴; VII

(d) “Royalty” means any sum payable as a charge per unit of quantity upon the produce of a colliery and includes any fixed payment which may be merged in such charges.

⁵ [(dd) “Railway administration” in the case of a railway administered by [a Government or a Federal Railway Authority]⁶ means the manager of the railway and includes the Government, and in the case of a railway administered by a railway company, means the railway company.]

(e) “Water for domestic purposes” does not include water for cattle or for horses or for washing carriages, where the

1. Substituted by the A. O. for “L. G.”

2. This Act has not been extended to any district in Orissa.

3. Inserted by s. 2 of the Jharia Water-supply (Amendment) Act, 1923
(B. & O. Act II of 1923).

4. Repealed and re-enacted by the Indian Mines Act, 1923 (IV of 1923), in Central Acts, Vol. VII, p. 357.

5. Inserted by s. 2 of the Jharia Water-supply (Amendment) Act, 1923
(B. & O. Act III of 1923).

6. Substituted by the A. O. for “the Government”.

(Sects. 3-6)

cattle, horses or carriages are kept for sale or hire or by a common carrier, or a supply for the purposes of any mining operation, or for any manufacture or business or for watering gardens, or for fountains or for any ornamental purpose;

- (f) "Waterworks" include streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, conduits, cuts, sluices, filter beds, mains, pipes, hydrants, culverts, engines and all machinery, lands, buildings and things for supplying or used for supplying water.

CHAPTER II

THE WATER BOARD

3. (1) A Board to be called the Jharia Water Board shall be established for the purpose of constructing and maintaining water-works, and generally for the purpose of supplying water for domestic purposes within the area of supply and for carrying the powers of this Act into execution.

Creation and incorporation of Board.

(2) The Board shall be a body corporate and have perpetual succession and a Common seal, and shall sue and be sued by the name of the Jharia Water Board.

4. (1) The Board shall consist of—

(a) four members elected by mine-owners;

Number of members,
Chairman
and Vice-Chairman.

(b) one member elected by royalty-receivers;

(c) not more than four members nominated by the [Provincial Government]¹.

(2) The Chairman of the Board shall be appointed by the [Provincial Government]¹ by notification in the official Gazette.

(3) The Vice-Chairman shall be elected by and from the members of the Board.

5. The election of members by mine-owners and royalty-receivers shall be made in the manner prescribed by rules made in this behalf by the [Provincial Government]¹.

Election of members.

6. (1) The term of office of the first members nominated or elected under section 4 shall commence on such day as may be fixed by the [Provincial Government]¹.

Term of office.

1. Substituted by the A. O. for "L. G."

THE JHARIA WATER-SUPPLY ACT, 1914

[B. & O. Act
(Sects. 6, 1, 9)]

(2) The term of office of members nominated or elected shall be three years, but any such member may, at the expiration of such term, be re-elected or re-appointed.

¹ [Provided that the said term of three years shall be held to include any period which may elapse between the expiration of the said three years and the date of the first meeting of a newly constituted Board at which a quorum shall be present.]

2 [6A. If any member of the Board be unable or unwilling to complete his full term of office, the vacancy so caused shall be filled by the election or nomination, as the case may be, of another person who shall hold office for the unexpired portion of the term for which such member would otherwise have continued in office.]

7. The Board shall, on the date fixed by the [Provincial Government]² under sub-section (7) of section 6, or so soon thereafter as may be expedient, hold a special meeting and at such meeting shall—

- (i) elect a Vice-Chairman,
- (ii) appoint a Secretary;

(iii) determine the number and fix the salaries of the officers and servants whom they consider necessary and proper to employ for the purposes of this Act.

8. The [Provincial Government]³ shall appoint a duly qualified Engineer to supervise and take charge of the construction and maintenance of waterworks, and shall fix the salary and allowances to be paid to such Engineer by the Board.

9. The power of appointing, promoting and granting leave to all other officers and servants of the Board, and reducing, suspending or dismissing them for misconduct and dispensing with their services for any reason other than misconduct shall be vested [in accordance with rules made by the [Provincial Government]⁴, and until such rules are made and subject to those rules when made],¹

- (i) in the case of officers and servants whose monthly salary does not exceed one hundred rupees in the Chairman; and
- (ii) in other cases in the Board.

1. Inserted by s. 2 of the Jharia Water-supply (Amendment) Act, 1921
(B. & O. Act II of 1921)

2. Inserted by s. 3, ibid.

3. Substituted by the A. O. for "L. G."

4. Inserted by s. 2 of the Jharia Water-supply
(B. & O. Act III of 1919).

Vacancies in
the Board.

Business to
be transact-
ed at first
meeting

Appoint-
ment of
Engineer.

Appointment
of other
officers and
servants

10. The Chairman may, with the approval of the [Provincial Government]¹ by general or special order in writing, delegate to the Vice-Chairman [or any officer of the Board]² any of the Chairman's powers, duties or functions under this Act or under any rule made thereunder unless such delegation is expressly prohibited by any such rule.

* * * * *

11. (1) The Board may enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of this Act.

⁴[(2) Every such contract made for the purposes of this Act shall be executed on behalf of the Board by such person in such manner and subject to such sanction, if any, as the [Provincial Government]¹ may by rule prescribe.]

(3) Every estimate for the expenditure of any sum for carrying out the purposes of this Act shall be subject to the approval of the authority who is empowered by [rules under]⁵ sub-section (2) to make or sanction the making of a contract involving the expenditure of a like sum.

12. The [Provincial Government]¹ may from time to time make rules as to—

- (a) the time, place and adjournment of meetings;
- (b) the conduct of business at meetings;
- (c) the notice to be given of meetings;
- (d) the attendance of members at meetings and the allowances to be paid therefor;
- (e) the quorum necessary for a meeting;
- (f) the custody of the common seal;

Rules as to
conduct of
business,
etc.

1. Substituted by the A. O. for "L. G."

2. Inserted by s. 3 (1) of the Jharia Water-supply (Amendment) Act, 1919 (B. & O. Act III of 1919).

3. The following words were omitted by s. 3 (2), *ibid* :—
 "Provided as follows:—

(a) the Chairman shall not delegate his power under s. 11 to make, on behalf of the Board, any contract involving an expenditure exceeding five hundred rupees;

(b) the Chairman shall not delegate his power under s. 9 to make appointments to offices carrying a salary of more than fifty rupees a month."

4. Substituted by s. 4 (a) of the Jharia Water-supply (Amendment) Act, 1919 (B. & O. Act III of 1919).

5. Inserted by s. 4 (b), *ibid*.

Delegation
of powers to
Vice-Chair-
man.

THE JHARIA WATER-SUPPLY ACT, 1914 [B. & O. Act
(Sects. 13-14)]

- (g) the persons by whom receipts shall be granted for money received under this Act;
- (h) the duties, appointment, leave, fining, suspension and removal of the officers and servants of the Board;
- (i) the execution of contracts and the invitation for tenders;
- (j) the delegation of powers or duties of the Board *
- ^{*1} [(k) any other matter in respect of which the [Provincial Government]² is by the provisions of this Chapter either required, or expressly or impliedly authorized, to make or prescribe rules.]

CHAPTER III
CONSTRUCTION OF WATERWORKS

Preparation
of scheme
and submis-
sion to Pro-
vincial Gov-
ernment.

13 As soon as may be after the commencement of this Act, the Board shall cause to be prepared a scheme and estimates of the cost of the works necessary for the purpose of providing a supply of water sufficient for the area of supply together with maps and plans of all the works of water-supply on such scale as may be prescribed by rule in this behalf, and shall submit the same to the [Provincial Government]³ through the Commissioner of the Division.

14. The [Provincial Government]³ shall consider the scheme together with the plans, maps, and estimates and may thereupon—

- (a) sanction the scheme, or,
- (b) add to, alter, or modify the scheme and approve the scheme so added to, altered or modified, or,
- (c) add to, alter or modify the scheme and return the same so added to, altered or modified, together with the plans, maps, and estimates to the Water Board, who shall further consider the scheme so added to, altered or modified and report thereon to the [Provincial Government]³ through the Commissioner of the Division.

1. The words "under this Act to the Chairman, the Engineer and the Secretary" omitted by s. 5 (1) of the Jharia Water-supply (Amendment) Act, 1919 (B. & O. Act III of 1919).

2. Inserted by s. 5 (2), ibid.

3. Substituted by the A. O. for "L. G."

(Secs. 15-20)

15. When the scheme has been approved by the [Provincial Government]¹, there shall be published in the official Gazette, and locally, the following particulars :—

Publication of approved scheme.

- (a) a general description of the scheme ;
- (b) an estimate of the cost of carrying it out ;
- (c) an estimate of the cost of maintaining it ;
- (d) the source from which the cost will be met.

16. After the expiry of two months from the date of such publication, and, after considering any objections or suggestions that may be submitted, the [Provincial Government]¹ may finally sanction the scheme as published either wholly or subject to such modifications as may seem necessary or may reject the scheme.

Sanction of scheme.

17. The provisions of sections 13 to 16 (both inclusive) shall apply to any extension of the original scheme which may subsequently be proposed by the Board.

Application of sections 13 to 16 to extension schemes.

18. When such scheme or any subsequent scheme has been finally sanctioned under section 16 the land which is required for the purpose of the waterworks included in such scheme, together with so much land on either side thereof as the [Provincial Government]¹ may deem necessary for the construction or support of the waterworks, may be acquired under the provisions of the law for the time being in force for the acquisition of land for public purposes and shall then vest in the Board.

Acquisition of land for waterworks.

²19. The Board may, subject to the provisions of section 21,—

Rights of user for aqueducts, conduits and lines of mains or pipes.

- (a) from time to time place and maintain aqueducts, conduits and lines of mains or pipes over, under, along or across any immovable property without acquiring the same :

Provided that the Board shall not acquire any right other than that of user, in the property over, under, along or across which any such aqueduct, conduit or line of mains or pipes is placed ;

- (b) at any time for the purpose of examining, repairing, altering or removing any aqueduct, conduit or line of mains or pipes enter on the property over, under, along or across which such aqueduct, conduit or line of mains or pipes has been placed.]

20. The provisions of sections 4 to 14 (both inclusive) of the Land Acquisition (Mines) Act, 1885², shall apply to a right of user acquired by the Board under section 19 in the same manner as if the land in respect of which such right is enjoyed had vested in the Board after acquisition thereof under the law for the time being in force for the acquisition of land for public purposes :

Application of Act XVIII of 1885 to lands in respect of which right of user is .rd

1. Substituted by the A. O. for "L. G."

2. Substituted by s. 3 of the Jharia Water-supply (Amendment) Act, (B. & O. Act III of 1925).

3. Printed in Central Acts, Vol. III, p. 238.

THE JHARIA WATER-SUPPLY ACT, 1914 [B. & O. Act]

(Sec. 21)

Provided that the notice required under section 4 of the said Act shall be given to the Board by the person referred to in that section sixty days before the commencement of working within two hundred feet measured horizontally on either side of any aqueduct, conduit or line of mains or pipes;

Provided also that a further notice shall be given to the Board by such person sixty days before he commences to draw pillars from under land within such distance of two hundred feet.

¹21. (1) The Board shall not exercise any of the powers conferred by section 19 in respect of any property vested in [the Crown]² or under the control or management of [the Central or the Provincial Government]³ or of any Local Authority or railway administration except with the permission of [the Government]⁴, Local Authority or railway administration concerned and in accordance with any rules made by the [Provincial Government]⁵ under sub-section (2) of this section :

Provided that the Board may, without obtaining such permission, repair, renew or amend any existing works of which the character or position is not to be altered if such repair, renewal or amendment is urgently necessary in order to maintain the supply of water without interruption or is such that delay would be dangerous to human life or property.

(2) The [Provincial Government]⁵ may from time to time make rules consistent with this Act to regulate—

(a) the power of the Board to enter on any property referred to in sub-section (1) of this section for the purpose of survey and examination ;

(b) the notice to be given, the plans to be furnished and the authorities to whom such notice shall be given and such plans furnished, and the permission to be obtained by the Board before commencing and carrying out work on such property ;

(c) the mode of execution of such work and the precautions to be taken in connection with it ;

(d) the assessment and payment of compensation in respect of such work ; and

1. Substituted by s. 4 of the Jharia Water-supply (Amendment) Act, 1925 (B. & O. Act III of 1925).

2. Inserted by the A. O.

3. Substituted by the A. O. for "the L. G."

4. Substituted by the A. O. for "the L. G."

5. Substituted by the A. O. for "L. G."

(Secs. 22-23)

(c) in general, the settlement of disputes and the mutual relation to be observed between the Board and any department [of the Central or the Provincial Government], any Local Authority and any railway administration :

Provided that such rules shall not be made—

- *(i) in the case of the railway administration of a Federal Railway (within the meaning of the Government of India Act, 1935), except with the sanction of the Federal Railway Authority ;
- (ii) in the case of a Department of the Central Government, except with the sanction of that Government);
- (iii) in the case of a Local Authority, except after consulting the Local Authority concerned.]

22. (1) The Board shall, in the exercise of such powers as are conferred under section 19, section 21 or clause (d) of section 24, cause as little damage, detriment and inconvenience as may be ; and shall make full compensation for any damage, detriment or inconvenience caused by them.

Compensa-
tion for
damage and
settlement of
disputes not
provided for
under sec-
tion 21.

(2) If any dispute for the settlement of which no provision has been made under section 21 arises between the Board and any owner of property to whom compensation is payable as regards the amount of compensation payable by the Board to such owner under sub-section (1), it shall be determined by such authority as the [Provincial Government]⁴ may appoint generally or specially in this behalf.]

23. When the Board in exercise of the powers conferred by or under this Act opens or breaks up the soil of any road [*]⁵ [or]⁶ railway [* *]⁷ they shall—

Precutions
to be taken
when break-
ing up road
or railway.

- (a) immediately cause the part opened or broken up to be fenced and guarded ;

1. Substituted by the A. O. for "of Government".

2. Substituted by the A. O. for the original proviso (i) which read as follows :—

"(i) in the case of a railway administration, except with the sanction of the Governor-General in Council".

3. Substituted by s. 5 of the Jharia Water-supply (Amendment) Act, 1923 (B. & O. Act III of 1923).

4. Substituted by the A. O. for "L. G."

5. The comma after the word "road" omitted by s. 6 (ii) of the Jharia Water-supply (Amendment) Act, 1923 (B. & O. Act III of 1923).

6. Inserted by ibid.

7. The words "or tramway" omitted by s. 6 (i), ibid.

(Sec. 2f)

- (b) before sunset cause lights sufficient for the warning of passengers to be set up and maintained against or near both ends of the part broken up or opened;
- (c) with all reasonable speed fill in the ground and reinstate and make good the soil opened or broken up, and carry away the rubbish occasioned by such opening or breaking up;
- (d) after reinstating and making good the soil broken or opened up, keep the same in good repair for three months and for any further period not exceeding nine months during which the subsidence continues; and
- (e) compensate the Local Authority or railway administration¹ to which the road [*] ² [or] ³ railway [* *]⁴ belongs for any damage caused and not repaired.

Powers for
carrying out
sanctioned
scheme.

24. When a scheme has been finally sanctioned under section 16, the Board shall proceed to carry it out, and for this purpose shall, subject to the provisions of this Act and to any rules made in this behalf by the [Provincial Government]⁵, have power—
- (a) to construct, maintain, repair, renew, alter, enlarge and extend reservoirs, mains, pipes and other waterworks upon or under the lands mentioned in sections 18 and 19;
 - (b) to enter upon any such land and take levels of the same, and set out such parts therof as they think necessary, and dig and break up the soil of such lands and trench the same;
 - (c) subject to the provisions of section 3 of the Land Acquisition (Mines) Act, 1885, ⁶ remove or use all earth, stone, mines, minerals, trees or other things dug or got out of the land acquired;
 - (d) to take, intercept and impound any water-flowing upon any land acquired under section 18;
 - (e) to make and maintain all such cuts, channels, catch waters, tunnels, pipes, conduits, culverts, drains, sluices, overflows, waste water channel, gauges, filter-beds, tanks, banks, walls, bridges, machinery and appliances as may be necessary or convenient in connection with, or subsidiary to, any of their waterworks;

¹ Substituted for "Company" by s. 6 (ii) of the Jharia Water Supply (Amendment) Act, 1925 (B. & O. Act III of 1925).

² The comma after the word "road" omitted by s. 6 (ii) *ibid.*

³ Inserted by *ibid.*

⁴ The words "and tramway" omitted by s. 6 (ii), *ibid.*

⁵ Substituted by the A. O. for "L. G."

⁶ Printed in Central Acts, Vol. III, p. 233.

(Secs. 25-26)

- (f) to open and break up the soil of any road [*]¹ [or]² railway [* *]³ within the area of supply;
- (g) to open and break up any sewer, drain or tunnel in or under such road [*]¹ [or]² railway [* *]³;
- (h) to do all other acts necessary for the due supply of water within the area of supply.

25. Within six months from the completion of the construction of the waterworks according to the scheme and plans sanctioned by the [Provincial Government]⁴, the Board shall cause a map to be made of the area within which such waterworks have been laid on a scale to be prescribed by rule in this behalf and shall cause to be marked thereon the course and situation of all existing mains, pipes or other waterworks for the collection, passage or distribution of water and underground works belonging to them in order to show all such underground works, and shall within one month from the making of any alteration or addition cause the said map to be from time to time corrected, and such map with the date expressed thereon of the last time when the same shall have been so corrected shall be kept in the office of the Board, and shall be open to inspection.

Map to be prepared and maintained.

26. The [Provincial Government]⁴ may, from time to time, make rules consistent with this Act :—

Power to make rules.

- (a) to fix the time within which a scheme is to be submitted and waterworks are to be constructed;
- (b) to prescribe and define the mutual relations to be observed between the Board and the District Board and the Mines Board of Health;
- (c) as to the preparation and submission of plans and estimates for the construction and maintenance of waterworks, and as to the conditions subject to which such plans and estimates may be sanctioned;
- (d) to prescribe the mains or pipes in which fireplugs are to be fixed, and the places at which keys of the fireplugs are to be deposited;
- (e) to prescribe the pressure at which water supplied by the Board is to be laid and the hours during which such pressure is to be maintained;

1. The comma after the word "road" omitted by s. 7 (ii) of the Jharia Water Supply (Amendment) Act, 1925 (B. & O. Act III of 1925).

2. Inserted by *ibid.*

3. The words "or tramway" omitted by s. 7 (i), *ibid.*

4. Substituted by the A. O. for "L. G."

THE JHARIA WATER-SUPPLY ACT, 1914 [B. & O. ACT
(Secs. 27, 29)

- (f) as to the periodical analysis by a qualified analyst of the water supplied by the Board and the action to be taken on his report;
 - (g) as to the management of reservoirs, filter-beds or other waterworks;
 - (h) as to the acquisition of land for the purposes of water-works,
 - (i) as to the repayment of loans taken by the Board.
-

CHAPTER IV

THE SUPPLY OF WATER

Supply of water to collieries

[27. The Board shall cause mains to be laid down and water to be brought to the boundary of every colliery situate in the area of supply paying the tonnage cess under section 54, and shall provide at least one connection and may, at the request and at the cost of the owner of any such colliery, provide additional connections between its mains and the communication pipes laid down by or for any such colliery.]

Supply of water to premises

[28. On the application of the owner of any premises situate in any part of the area of supply other than a colliery, the Board may, subject to such rules as the [Provincial Government]¹ may make in this behalf, supply water to such premises on such conditions as may be agreed upon between it and the owner of such premises.]

Supply of water to towns, villages and places

[29. The Board may provide a supply of water through standpipes to any town, village or place within the area of supply—

- (a) on its own motion if it considers that such supply is necessary for the preservation of public health;
- (b) on application from the residents of such town, village or place;
- (c) on application from any Local Authority charged with the administration of, or empowered to make provision for the supply of water to, such town, village or place;

on such conditions and in such manner as the [Provincial Government]² may prescribe by rules made from time to time in this behalf.]

¹. Substituted by ² of the Jharia Water-supply (Amendment) Act, 1925.
In A.O. Act III of 1923).

². Substituted by the A.O. for "L.G."

(Sects. 30-32)

¹30. (1) Communication pipes and all fittings thereon for the purpose of leading water from the Board's mains to any colliery or premises supplied under section 27 or section 28 shall be constructed by the owner of such colliery or premises or by the Board at the cost of such owner.

Communication pipes
for supply
of water to
collieries.

(2) Where such pipes and fittings are constructed by the owner they shall in all cases be executed to the satisfaction of the Board and in accordance with such rules as the [Provincial Government]² may make in this behalf; and the Board may decline to lay on the water until such pipes and fittings have been inspected by the Engineer or such other person as the Board may authorize in this behalf, the fee payable under sub-section (3) deposited, and a certificate obtained from the Engineer or such other person that such pipes or fittings are in order.

(3) The cost of such inspection shall be payable by the owner at such rates as the Board at a meeting may from time to time determine.

(4) Such pipes and fittings may be made and executed by the Board upon such terms and charges as may be agreed upon between the Board and the owner.

(5) [³ all such
Board a
repair by, or at the cost of, the owner.]

* 31. * * * * *

32. For the purpose of measuring and recording the amount of Meters, water consumed, the Board shall affix a meter at the point of junction between the communication pipe of the consumer and the main or pipe belonging to the Board, and the cost of such meter shall be borne by the Board:

* [Provided that if at the request of the consumer more than one connection is provided under section 27, any extra meter shall be put in at the cost of the consumer.]

1. Substituted by s. 8 of the Jharia Water-supply (Amendment) Act, 1925 (B. & O. Act III of 1925).

2. Substituted by the A. O. for "L. G."

3. Rates to be charged for Water. Rep. by s. 9 of the Jharia Water (Amendment) Act, 1925 (B. & O. Act III of 1925).

4. Inserted by s. 10, *ibid.*

Presumption
as to correct-
ness of
meters

Testing of
meters

33. Whenever water is supplied under this Act through a meter it shall be presumed that the quantity indicated by the meter has been consumed until the contrary is proved.

34 (1) If the consumer desires to have [any meter]¹ tested, he may send an application to the Board together with a fee of [ten]² rupees.

(2) On receipt of such application and fee the Board shall forthwith cause such meter to be tested at a time and place to be specified in a notice to such consumer;

(3) If such meter is found on being tested to be [incorrect]³ by more than four per centum, the said fee shall be returned to the person who sent it.

35. The Board shall replace any meter [other than a meter supplied at the cost of the consumer]⁴ which is out of repair.

36. The Board may supply water for other than domestic purposes *

Provided that no such supply shall be given or continued, if the same would interfere with the sufficiency of the supply of water for domestic purposes.

*37.

* * * * *

38 (1) Any officer authorised in that behalf by the Board may at any time enter into or on any colliery, premises or land supplied with water aforesaid in order to examine all pipes, works and fittings connected with the supply of water and to ascertain whether there be any use of water for other than domestic purposes.

(2) If such officer at any such time be refused admittance into such colliery, premises or land for the purposes aforesaid, or be prevented from making such examination, the Board may forthwith cut off the supply of water from such colliery, premises or land.

1. Substituted for "the meter" by s. 11 of the Jharia Water-supply (Amendment) Act, 1925 (B. & O. Act III of 1925).

2 Substitute I for "five" by *ibid*

3 Substituted for "correct" by s. 6 of the Jharia Water-supply (Amend-
ment) Act, 1919 (B. & O. Act III of 1919).

4. Inserted by s. 12 of the Jharia Water-supply (Amendment) Act, 1925 (B. & O. Act III of 1925).

5. The words, "at such rates for every one thousand gallons as may be determined by the Board at a meeting and approved by the Local Government".

6. Communication pipes, etc., to be made, to satisfaction of Board, by s. 14, *ibid*.

Power to
enter
premises

Replace-
ment of
broken
meters.

Water for
other than
domestic
purposes

(Sects. 39-43)

39. In the event of any pipes, works or fittings connected with the supply of water to any colliery, premises or land being at any time found on examination by any officer of the Board authorised in that behalf, to be out of repair to such an extent as to cause waste of water the Board may cause the water to be turned off from such colliery, premises or land after giving notice in writing of not less than twenty-four hours, and may [except where the owner is under the terms of an agreement made under sub-section (5) of section 30 not liable to maintain such pipes, works or fittings in repair]¹ recover from the [owner]² of such colliery, house or land the expense incurred for turning off the water.

Power to turn off water when pipes are out of repair.

40. (1) The Board may, with the sanction of the [Provincial Government]³, make by-laws for preventing the waste, undue consumption, misuse or contamination of water, and may by such by-laws prescribe the size, nature, materials, workmanship and strength and the mode, arrangement, connection, disconnection, alteration and repair of pipes, meters, cocks, ferrules, valves, baths, cisterns and other apparatus to be used, and forbid any arrangements and the use of any water fittings which may allow or tend to waste, undue consumption, misuse, erroneous measurement or contamination.

Power of Board to make by-laws for the prevention of waste and to prescribe water fittings.

(2) In case of failure of any person to observe such by-laws the Board may, if they think fit, after twenty-four hours' notice in writing, enter and, by or under the direction of their duly authorised officer, at the cost of such person, repair, replace or alter any water fittings belonging to or used by him.

(3) By-laws made under this section shall, when they have obtained the sanction of the [Provincial Government]³, be published in the official Gazette.

41. If any person supplied with water neglects to pay therefor at the rates prescribed under this Act at the times of payment thereof, the Board may turn off the water from the colliery, premises or land in respect of which such rate or charge is payable, and may recover the expense of turning off the water from such person.

Power to cut off water on neglect.

42-43.

* * * * *

1. Inserted by s. 15 (ii) of the Jharia Water-supply (Amendment) Act, 1925 (B & O. Act III of 1925).

2. Substituted for "occupier" by s. 15 (ii), ibid.

3. Substituted by the A. O. for "L. G."

4 Inspection of works and fittings before supply of water is finally sanctioned. Owner to keep estimate and specification of works. Rep by s. 15 of the Jharia Water-supply (Amendment) Act, 1925 (B. & O. Act III of 1925).

(Sect. 44A)

Recovery
water rates,
costs and
expenses.

44. All sums payable to the Board under this Chapter either for expenses incurred, or for costs, fees or fines, shall on requisition by the Board be recoverable by the Deputy Commissioner by any process provided by any law for the time being in force for the recovery of public demands, and the sums so recovered shall be credited to the Jharia Water Fund in the District Treasury or a Sub-Treasury for into any bank or branch bank used as a Government

Power to
make rules.

³[44A. The [Provincial Government]¹ may from time to time make rules consistent with this Act.—
 (a) to regulate the supply of water to premises other than a colliery ;
 (b) to prescribe the conditions subject to which and the manner in which water may be supplied through stand-pipes to any town, village or place ; and
 (c) to regulate the execution by the owner of a colliery of communication pipes and all fittings thereon.]

CHAPTER V

THE JHARIA WATER FUND

45. There shall be formed a fund to be called the Jharia Water Fund which shall be vested in the Water Board and there shall be placed to the credit thereof in the District Treasury or a Sub-Treasury for into any bank or branch bank used as a Government Treasury].—

- (1) the proceeds of a tonnage cess on the annual despatches of coal and coke from mines ;
- (2) the proceeds of a cess on royalties ;
- (3) the proceeds of the sale of water to consumers ;
- (4) all sums borrowed by the Board under the Local Authorities Loans Act, 1914,² and all sums which may be allotted to the Board from the Provincial Revenues by the [Provincial Government]³, for the purpose of carrying out the provisions of this Act ;
- (5) all sums levied within the area of supply as costs, fees, penalties]⁴.

1. The words "for water supplied or" omitted by s. 17 of the Jharia Water-supply (Amendment) Act, 1925 (B. & O. Act III of 1925).⁵

2. Inserted by *ibid.*

3. Inserted by s. 18, *ibid.*

4. Substituted by the A. O. for "L. G."

5. Inserted by s. 19 of the Jharia Water-supply (Amendment) Act, 1925 (B. & O. Act III of 1925).

6. Printed in Central Acts, Vol. VI, p. 495.

7. The words "fines, penalties" rep. by the A. O.

8. Inserted by *ibid.*

(Secs. 46-47)

46. The Jharia Water Fund shall be applicable to the following objects and in the following order :—

Application of Fund.

- (1) to the payment of any sums which the Board may be liable to pay as interest upon loans, and to the re-payment of principal of such loans or to the formation of a sinking fund therefor;
- (2) to the payment of the salaries of the establishment employed by the Board;
- [{(2a) to the payment of contributions, in accordance with rules approved by the [Provincial Government]², to a provident fund for the establishment employed by the Board};
- {(2b) to the refund of the tonnage cess and the cess on royalties under section 63A];
- (3) to the payment of the expenses of audit;
- (4) to the payment of expenses incurred in the construction, repair and maintenance of waterworks, and in the performance of duties imposed by this Act;
- (5) to the payment, at such rates as the [Provincial Government]² may direct, of the travelling expenses incurred by officers of the Board in the performance of their duties, and by Members of the Board in attending meetings of the Board.

47. (1) The Chairman shall, at a meeting to be held in the month of December in each year, lay before the Board an estimate of the income and expenditure of the Board for the next ensuing financial year.

Annual estimate of income and expenditure.

(2) Every such estimate shall make provision for the due fulfilment of all the liabilities of the Board and for the efficient administration of the Act.

(3) Every such estimate shall be prepared in such form and shall contain such details as the [Provincial Government]² may from time to time direct.

(4) A copy of every such estimate shall be sent to each Member of the Board at least ten clear days before the date of the meeting at which the estimate is to be laid before the Board.

1. Inserted by s. 4 of the Jharia Water-supply (Amendment) Act, 1921
(B. & O. Act II of 1921).

2. Substituted by the A. O. for "L. G."

3. Inserted by s. 3 of the Jharia Water-supply (Amendment) Act, 1923
(B. & O. Act II of 1923).

Consideration of estimate by Board.

Submission of Estimate to Commissioner.

Estimate of expenditure on commencement.

Supplementary estimates.

Restrictions on expenditure not included in budget.

48. The Board shall consider every estimate so laid before them and shall sanction the same, either without alteration or with such alterations as they may think fit.

49. (1) Every such estimate, as sanctioned by the Board, shall be submitted to the Commissioner of the Division who may at any time within two months after the receipt of the same—
 (a) approve the estimate, or
 (b) disallow the estimate or any portion thereof and return the estimate to the Board for amendment.

(2) If any estimate is so returned to the Board they shall forthwith proceed to amend it, and shall re-submit the estimate, as amended, to the Commissioner who may then approve it or refer it to the [Provincial Government]¹ whose decision shall be final.

50. (1) A meeting of the Board shall be held as soon as may be expedient after the day appointed under section 8, sub-section (1), and the Chairman shall at such meeting lay before the Board an estimate of the expenditure of the Board for the portion of the year which on the said day has not expired.

(2) The provisions of sections 47, 48 and 49 shall apply to the said estimate.

51. The Board may at any time during the year for which any estimate has been sanctioned, cause a supplementary estimate to be prepared and laid before them at a special meeting, and the provisions of sections 47, 48 and 49 shall apply to such supplementary estimate.

52. (1) No sum shall be expended by or on behalf of the Board unless the expenditure of the same is covered by a current budget grant or can be met by re-appropriation or by drawing on the closing balance.

(2) The closing balance shall not be reduced below such amount as may from time to time be fixed by the [Provincial Government]¹.

(3) The following items shall be excepted from the provisions of sub-sections (1) and (2), namely :—

- (a) repayment of monies belonging to contractors or other persons and held in deposit, and of monies collected by or credited to the Board by mistake;
- (b) payments due under a decree or order of a court passed against the Board, or against the Chairman *ex-officio*, or under an award of arbitrators;

¹. Substituted by the A. O. for "L. G."

(Secs. 53-55A)

- (c) any sums payable under a compromise of any suit or other legal proceeding;
- (d) sums payable under this Act by way of compensation ; and
- (e) payments required to meet some pressing necessity.

53. The [Provincial Government]¹ may from time to time make rules consistent with this Act to regulate—

Power to make rules.

- (a) the custody of the Jharia Water Fund ;
- (b) the keeping of proper accounts ;
- (c) the forms and registers to be used ;
- (d) the audit of accounts ;
- (e) the preparation and submission of estimates ;
- (f) the amount of the closing balance.

CHAPTER VI

[TONNAGE CESS, ROYALTY CESS AND WATER RATES]

54. From and after the commencement of this Act there shall be levied by the Board within the area to which this Act applies :—

Levy of cesses.

- (1) a tonnage cess on the annual despatches of coal and coke from each mine in the said area ;
- (2) a cess on royalties from mines in the said area.

²[Provided that the tonnage cess shall, after the commencement of Part III of the Government of India Act, 1935, only be leviable until provision to the contrary is made by the Central Legislature.]

³[55. The tonnage cess shall be payable by the owner of each mine and shall be assessed on the annual despatches of coal and coke from each mine at rates not exceeding nine pies for each ton of coal and one anna for each ton of coke.]

⁴[55A. Any surplus in the hands of the Board in excess of one hundred thousand rupees at the end of any financial year after the 31st March 1927 shall be refunded by the Board to persons who have paid the tonnage cess in proportion to the amounts of such cess paid by them.]

Tonnage cess.,

Refund of surplus to payers of tonnage cess.

1. Substituted by the A. O. for "L. G."

2. Substituted for "Tonnage and Royalty Cesses" by s. 20 of the Jharia Water-supply (Amendment) Act, 1925 (B & O. Act III of 1925).

3. Inserted by the A. O.

4. Substituted by s. 21 of the Jharia Water-supply (Amendment) Act, 1925 (B & O. Act III of 1925).

5. Inserted by s. 22, ibid.

THE JHARIA WATER-SUPPLY ACT, 1914 [B. & O. Act
(Sects. 56-56B)]

Royalty
cess.

56. [(1) The cess on royalties shall be payable by each person who receives royalty from any mine situated within the area to which this Act applies, and shall be assessed at a rate not exceeding five per centum of the assessed amount of the royalty received.]

(2) Where any person who receives royalty himself pays royalty to a superior landlord in respect of the same mine, the cess payable by such person shall be assessed on the net amount received by him after deducting the amount so paid.

(3) Nothing in any contract, whether made before or after the commencement of this Act, shall entitle a lessor to claim or recover from a lessee the cess leviable under sub-section (1) in respect of any royalties received by the lessor.

²[56A. For water supplied through its mains and pipes for domestic purposes the Board shall be entitled to charge—

(i) the owner of a colliery supplied under section 27—
(a) at rates not exceeding 12 annas for every thousand gallons or part thereof within the supply to which such colliery is entitled as determined under sub-section (1) of section 56B; and

(b) for every thousand gallons or part thereof in excess of such supply at such rates as may be determined by rules made by the [Provincial Government] in this behalf; and

(ii) the owners of premises supplied under section 28 at such rates not being less than 12 annas a thousand gallons as may be agreed upon between such owners and the Board.]

²[56B. (1) The supply to which each colliery supplied under section 27 is entitled shall be determined by the Board in accordance with such by-laws as the Board with the sanction of the [Provincial Government]³ may make in this behalf.

(2) By-laws made under this section shall, when they have obtained the sanction of the [Provincial Government]³, be published in the official Gazette.]

1925 I. Substituted by ²³ of the Jharia Water Supply (Amendment) Act, 1925 (B. & O. Act III of 1925).

2 Inserted by ²⁴, ibid.

3 Substituted by the A. O. for "L. O."

Determ
nation of
amount
of supply of
water to
collieries.

(Sects. 56C-58)

²[56C. Nothing in section 56A shall prevent the Board from granting to any colliery paying the tonnage cess under section 54, a free supply of water of not less than one thousand gallons per rupee of tonnage cess paid by such colliery on the assessment of the previous year.]

Free supply
of water to
collieries.

⁴[56D. The Board shall be entitled to recover the cost of water supplied through stand-pipes to towns, villages and places under section 29 in such manner as the [Provincial Government]² may from time to time determine in regard to—

Recovery of
cost of water
supplied to
towns,
villages and
places

- (i) the contribution, if any, to be paid by any Local Authority applying for the supply under clause (c) of section 29;
- (ii) the persons to be assessed;
- (iii) the rate, manner, publication and revision of assessment; and
- (iv) the realization of amounts due.]

WHERE THE water supplied through its mines and mines for other

Charge for
water
supplied for
other than
domestic
purposes.

²[57. (1) The rates of tonnage cess and royalty cess leviable under section 54 and the rate at which water supplied to collieries under section 27 is to be charged for under sub-clause (a) of clause (i) of section 56A shall be determined annually by the Board at a meeting, together with the date or dates on which such rates are payable.

Determina-
tion of
cesses and
water rates.

(2) The rates and dates shall be subject to the approval of the [Provincial Government]².

(3) The Board shall cause the rates and dates approved by the [Provincial Government]² to be published in the official Gazette and locally in such manner as the [Provincial Government]² may direct.]

⁴[58. At the close of each calendar year the Board shall cause a notice to be served—

Notice to
lignite
return.

- (a) on each mine-owner requiring him to lodge before the end of January in the office of the Board a return of the quantity of coal and coke despatched from his mine during the aforesaid calendar year, and of the royalties

1. Inserted by s. 24 of the Jharia Water-supply (Amendment) Act, 1923 (B. & O. Act III of 1923).

2. Substituted by the A. O. for "L. O."

3. Substituted by s. 25 of the Jharia Water-supply (Amendment) Act, 1923 (B. & O. Act III of 1923).

4. Substituted by s. 7 of the Jharia Water-supply (Amendment) Act, 1919 (B. & O. Act III of 1919).

THE JHARIA WATER-SUPPLY ACT, 1914 [B. & O. ACT]

(Secs. 69-63)

payable in respect of that quantity together with the names of the persons to whom they are payable;

(b) on each receiver of royalty requiring him to lodge in like manner a return of all royalty received by him during the aforesaid calendar year.]

I return no
furnished or
correct,
Board to
ssess quan-
ity des-
patched.

Notice to
owner of
quantity
ascertained.

Notice of
cess payable
and dates.

Payment to
Board, and
deposit to
credit of
W. & R Fund.

Realization
of arrears.

59. If such return be not furnished within the period prescribed in the preceding section or within any extended time allowed by the Board, or, if the Board deems that any return made in pursuance of such notice is untrue or incorrect, the Board shall proceed to ascertain and determine by such ways or means as to them shall seem expedient the quantity of coal and coke despatched from the mine concerned, and for this purpose shall have power to require the production of any register kept by a mine-owner.

60. So soon as the Board shall have ascertained and determined under the preceding section the quantity of coal and coke despatched from any mine they shall cause to be served upon the owner of such mine a notice informing him of the quantity so ascertained and determined.

61. (1) When the quantity of coal and coke despatched and the amount of royalties have been ascertained and determined, the Board shall cause to be served on the owner of every mine and on every receiver of royalty, a notice showing the amount of tonnage cess or royalty cess, respectively, payable in respect of such quantity or amount, and specifying the date from which such cess will be payable.

(2)*

* * * *

62. The cesses [and water rates]¹ leviable under this Act shall be paid to the Board, and the Board shall grant receipts therefor, and shall deposit the amounts so received to the credit of the Jharia Water Fund in the District Treasury or a Sub-Treasury [or into any bank or branch bank used as a Government Treasury]².

63. The Board shall at the end of each year or at such other interval as the [Provincial Government]³ may by rule prescribe [send a list of defaulters in payment of cesses or water rates due to the Board to the Deputy Commissioner who shall then take action to realize the amounts due by any process provided by any law for the time being in force for the recovery of public demands].

¹ Repealed by s. 26 of the Jharia Water-supply (Amendment) Act, 1925
(B. & O. Act III of 1925).

² Inserted by s. 27, ibid.

³ Inserted by ibid.

4. Substituted by the A. O. for "L. G."
5. Substituted by s. 23 of the Jharia Water-supply (Amendment) Act, 1925
(B. & O. Act III of 1925) for the following words:-

"send a list of owners and receivers of royalties within the district who have failed to pay the amounts due for cess, and the Deputy Commissioner may then realize such amounts from the defaulters by any process provided by any law for the time being in force for the recovery of public demands".

(Secs. 63A-66)

¹[63A. If at any time this Act is withdrawn from any area by notification under sub-section (5) of section 1, the Board shall refund from the Jharia Water Fund the tonnage cess and the cess on royalties that have, up to the date of such withdrawal, been levied under the provisions of this Chapter within the said area together with such interest thereon as the [Provincial Government]² may determine, to such persons as the [Provincial Government]² may by general or special order direct.]

Refund of
cess on wit-
drawal of
Act.

64. The [Provincial Government]² may from time to time make rules consistent with this Act to provide for the following, namely:—

- (a) the manner of assessing and recovering the cesses [and water rates]³ payable under this Act;
- (b) the registration of owners of mines and receivers of royalties;
- (c) the form and service of notices;
- (d) the agency by which notices are to be served;
- (e) the local publication of rates;
- (f) the form of receipts to be granted and other similar matters;

⁴[(g) to determine the rates for water supplied to a colliery in excess of the supply to which such colliery is entitled under sub-section (1) of section 56B.]

Power to
make rules.

CHAPTER VII

PENALTIES

65. Any person who wilfully obstructs any person acting under the authority of the Board in setting out the line of works, or pulls up or removes any pillar, post or stake fixed in the ground for the purpose of setting out the line of such works, or defaces or destroys any works made for the same purpose, shall be liable on conviction to a penalty not exceeding fifty rupees.

Penalty for
obstructing
the laying
out of
water-
works.

66. Any person who maliciously, wilfully or negligently breaks, injures or opens any lock, cock, valve, pipe or other waterwork belonging to the Board shall be liable on conviction to a fine not exceeding one hundred rupees.

Penalty for
causing
damage to
water-
works.

1. Inserted by s. 4 of the Jharia Water-supply (Amendment) Act, 1923.
(B. & O. Act II of 1923).

2. Substituted by the A. O. for "L. G."

3. Inserted by s. 29 (i) of the Jharia Water-supply (Amendment) Act, 1925.
(B. & O. Act III of 1925).

4. Inserted by s. 29 (ii), ibid.

THE JHARIA WATER-SUPPLY ACT, 1914 (B. & O. Act)

(Sects. 67-72)

Penalty for
obstructing
or drawing
off water.

Penalty for
waste of
water by
consumer.

Penalty for
waste in
other cases.

Penalty for
misuse of
water.

Penalty for
defiling
water.

Penalty for
tempering
with water.

67. Any person who unlawfully obstructs the flow of, flushes, draws off, diverts or takes water from any waterwork belonging to or under the control or management of the Board, or from any water or stream by which such waterworks are supplied, shall be liable on conviction to a fine not exceeding one hundred rupees.

68. The occupier of any colliery, premises or land in which water supplied by the Board under this Act is from negligence, or in other circumstances under the control of such occupier, wasted, or in whose colliery, premises or land the pipes, works or fittings for the supply of water are found to be out of repair to such an extent as to cause waste of water, shall be liable on conviction to a fine not exceeding twenty rupees.

69. Any person otherwise causing waste of water supplied by the Board shall be liable on conviction to a fine not exceeding five rupees.

70. Any person who—
 (a) uses for other than domestic purposes any water supplied under this Act for domestic purposes; or
 (b) where water is supplied under section 36 for a specified purpose, uses that water for any other purpose;
 shall be liable on conviction to a fine not exceeding fifty rupees, without prejudice to the right of the Board to recover from him the price of the water misused.

71. Any person who—
 (a) bathes in, at or upon any waterworks, or washes, throws or causes to enter therein any animals; or
 (b) throws any rubbish, dirt, filth or other noisome thing into any waterworks, or washes or cleanses therein any cloth, wool, leather or skin of any animal, or any clothes or other things; or
 (c) causes the water of any sink, sewer or drain, or of any steam engine or boiler or any other filthy water belonging to him or under his control, to turn or be brought into any waterworks or does any other act whereby the water in any waterworks is fouled, or likely to be fouled,
 shall be liable on conviction to a fine for every such offence not exceeding one hundred rupees.

72. Any person who—
 (a) dishonestly alters the index to any meter or prevents any meter from duly registering the quantity of water supplied; or
 (b) dishonestly obstructs or uses water belonging to the Board before it has been registered by a meter set up for the purpose of measuring the same; or

(Secs. 73-78)

(c) wilfully or negligently injures or suffers to be injured any meter belonging to the Board or any fittings of any such meter,
shall be liable on conviction to a fine not exceeding one hundred rupees.

73. Any person who obstructs any officer of the Board in the discharge of his duties under this Act, or refuses or wilfully neglects to furnish him with the means necessary for making any entry, inspection, examination or inquiry thereunder in relation to any waterworks, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Penalty for
obstruction
to Board's
officers.

74. Any person who makes, gives or delivers any notice or return required by or under this Act, which contains a statement, entry or detail which is not to the best of his knowledge or belief true, shall be punishable with fine which may extend to five hundred rupees.

Penalty for
giving false
returns.

75. Any person who—

(a) fails to comply with any requisition or order made under any provision of this Act or of any rule or order made thereunder; or

Penalty for
breach of
provisions of
Act, not
otherwise
provided for.

(b) contravenes any provision of this Act, or any rule or order thereunder, for the breach of which no penalty is otherwise provided shall be liable on conviction to a fine not exceeding two hundred rupees, and, in the case of a continuing breach under clause (a) of this section, to a further fine which may extend to fifty rupees for every day during which the breach is proved to have been persisted in after the date of the receipt by him of the requisition or order referred to in that clause.

76. No prosecution shall be instituted against any owner, agent or manager of a mine for any offence against this Act, or any rule or order thereunder, except at the instance of the Board.

Prosecution
of owner,
Agent or
Manager.

CHAPTER VIII MISCELLANEOUS

77. All rules, orders and notifications made under this Act shall be published in the Jharia Gazette and shall have effect as if they were made under this Act.

Publication
of rules,
orders and
notifica-
tions.

78. (1) Every notice, bill, and form or notice of demand under this Act may be served personally on, or presented to, the person to whom the same is addressed or his agent or manager, or may be sent by registered post to such person or his agent or manager.

(2) Service of a notice, bill, form or demand on an incorporated company may be effected by serving it on the Secretary, local manager

(Sec. 79-82)

Appeals

or other principal officer of the corporation ; or by registered post addressed to the Chief Officer of the corporation in British India.

79 (1) An appeal against the assessment of tonnage cess or royalty cess shall lie to the Commissioner of the Division or to such other officer as may be empowered by the [Provincial Government] in this behalf.

(2) No appeal shall lie in respect of the assessment unless it is preferred within sixty days from the time when the demand for the cess is made.

80. (1) If at any time it appears to the [Provincial Government] on the report of the Commissioner of the Division that the Board have made default in performing any duty imposed on them by or under this Act, the [Provincial Government] may, by an order in writing, fix a time for the performance of that duty.

(2) If the Board fail to perform that duty within the period so fixed, the [Provincial Government] may order it to be performed by any other agency, and may direct that the expense of performing it shall be paid within such time as it may fix from the Jharia Water Fund.

(3) If the expense is not so paid, the Deputy Commissioner, with the previous sanction of the [Provincial Government], may make an order directing the person having the custody of the balance of the Jharia Water Fund to pay the expense, or so much thereof as is from time to time possible, from the balance, in priority to any or all other charges against the same.

81 If, in the opinion of the [Provincial Government], the Board are not competent to perform, or persistently make default in the performance of, the duties imposed on them by or under this Act, or exceed or abuse their powers, the [Provincial Government] may, by an order published, with the reasons for making it, in the official Gazette declare the Board to be incompetent or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order.

82. When an order of supersession has been passed under the last preceding section, the following consequences shall ensue :—

- (a) all the members of the Board shall as from the date of the order vacate their offices as such members;
- (b) all the powers and duties of the Board shall during the period of supersession be exercised and performed by such person or persons as the [Provincial Government]¹ may direct;
- (c) all property vested in the Board shall during the period of supersession vest in the Crown for the purposes of the Province².

1. Substituted by the A. O. for "L. O."

2. Substituted by the A. O. for "vest in the L. O."

Powers of Provincial Government in case of default

Power to supersede Board in case of incompetency, default or abuse of powers.

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BIHAR AND ORISSA ACT IV OF 1914

(THE BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914)

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30. Application to set aside sale on ground that certificate-debtor had no saleable interest or that property did not exist.
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- Disposal of Proceeds of Execution
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35. Dispossession by purchaser
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- Arrest, Detention and Release
38. Power of arrest and detention
39. Release from arrest and re-arrest
40. Detention in, and release from, prison
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42. Prohibition of arrest or detention of women and persons under disability.
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- REFERENCE TO CIVIL COURT
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56. "
57. "
58. "
59. Control over officers
60. Appeal
61. Bar to second appeals
62. Revision
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64. Saving of other Acts
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66. Certificate-officer deemed to be a Court
67. Penalties
68. " " " " " rs
69. " " " " " t, 1885, the Orissa
Tenancy Act, 1908.

SCHEDULE I.—PUBLIC DEMANDS

SCHEDULE II.—RULES

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2. Mode of service
3. Service on certificate-debtor or his agent
4. Service on adult male member of certificate-debtor's family
5. Person served to sign acknowledgment
6. Procedure where certificate-debtor refuses to accept service or cannot be found
7. Endorsement of time and manner of service
8. Examination of serving officer
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PETITIONS UNDER SECTION 9, DENYING LIABILITY

10. Signature and verification of petition denying liability
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EXECUTION OF CERTIFICATES

12. Execution in another district

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53. Discretionary power to permit certificate-debtor to show cause against detention in prison.
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SUPPLEMENTAL

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APPENDIX—

- Form no. 1. Certificate of public demand
 Form no. 2. Requisition for a certificate
 Form no. 3. Notice to certificate-debtor
 Form no. 4. Petition denying liability
 Form no. 5. Notice to show cause why sale should not be set aside.
 Form no. 6. Warrant of arrest
 Form no. 7. Order committing certificate-debtor to the civil prison.
 Form no. 8. Notice to legal representative of certificate-debtor
 Form no. 9. Notice to certificate-holder
 Form no. 10. Warrant of sale of property
 Form no. 11. Notice of the day fixed for settling a sale proclamation
 Form no. 12. Proclamation of sale
 Form no. 13. Order on the Nazir for causing publication of proclamation of sale.
 Form no. 14. Certificate, by officer holding a sale, of the deficiency of price on a re-sale of property by reason of the purchaser's default.
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16. Attachment of debt, share, and other movable property not in possession of certificate-debtor.
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28. Adjournment or stoppage of sale
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41. Rules 38 to 40 not to apply in certain cases to certificate-holders who are co-sharer landlords.
42. Postponement of sale to enable certificate-debtor to raise amount due under certificate.
43. Prohibition of purchase of tenure or holding by certificate-debtor.
44. Deposit by purchaser and re-sale in default
45. Time for payment of purchase-money in full
46. Procedure in default of payment
47. Notification on re-sale
48. Bid of co-sharer to have preference
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50. Certificate to purchaser
51. Delivery of property in occupancy of certificate-debtor
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Arrest and Detention

Rule

53. Discretionary power to permit certificate-debtor to show cause against detention in prison.
 54. Subsistence allowance

SUPPLEMENTAL

55. Register of certificates
 56. Payment by instalments
 57. Remittance to certificate-officer of sums received under a certificate transferred for execution.
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SCHEDULE III.—AMENDMENTS

No.	Date	Amendment	Page	Act, 1908
1	1914	Amendment 1	985	13
2	1914	Amendment 2		

BIHAR AND ORISSA ACT IV OF 1914
 (THE BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914)
 (1st July, 1914)

An Act to consolidate and amend the law relating to the recovery of
 Public Demands in Bihar and Orissa.

Whereas it is expedient to consolidate and amend the law
 relating to the recovery of public demands in Bihar and Orissa ;
 And whereas the previous sanction of the Governor General has
 been obtained, under section 5 of the Indian Councils Act, 1892, to
 the passing of this Act ;
 It is hereby enacted as follows —

PART I

PRELIMINARY

1. (1) This Act may be called The Bihar and Orissa Public Demands Recovery Act, 1914 ;
 (2) It shall come into force² on such date as the [Provincial Government]³ may appoint by notification in the [Official Gazette]⁴, and
 (3) It extends to the whole of Bihar and Orissa except the Districts of Angul⁵ and Sambalpur.

Short title,
 commencement
 and extent.

et I
 et I
 2. The following enactments are hereby repealed, namely :—
 (a) the Public Demands Recovery Act, 1895, and
 (b) the Bengal Public Demands Recovery (Amendment) Act, 1897

Repeal.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "certificate-debtor" means the person named as debtor in a certificate filed under this Act, and includes any person whose name is substituted or added as debtor by the Certificate-officer ;

Definitions.

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Bihar and Orissa Gazette, 1913, Pt. V, pp. 45-47; for the Report of the Select Committee, see *ibid*, 1914, Pt. V, pp. 1-8; for Proceedings in Council, see *ibid*, Pt. VI, pp. 323-344.

LOCAL EXTENT.—See s. 1 (3) above.

OTHER ENACTMENTS.—For recovery of certain other public demands, see the Revenue Recovery Act, 1890 (1 of 1890), Printed in Central Acts, Vol. III, p. 315. No 7510-R, dated the 5th October, 1914, published in the Bihar and Orissa Gazette, 1914, Pt. II, p. 2014.

3. Substituted by the A. O. for "L. G."

4. Substituted by the A. O. for "Bihar and Orissa Gazette".

5. The then district of Angul is now the districts of (i) Angul and (ii) the Khondmals.

THE BIHAR AND ORISSA PUBLIC DEMANDS [B. & O. ACT]

(Secs. 4-5)

- (2) "certificate-holder" means the [Government or]¹ person in whose favour a certificate has been filed under this Act, and includes any person whose name is substituted or added as creditor by the Certificate-officer;
- (3) "Certificate-officer" means a Collector, a Subdivisional officer, and any officer appointed by a Collector, with the sanction of the Commissioner, to perform the functions of a Certificate-officer under this Act;
- (4) "movable property" includes growing crops;
- (5) "prescribed" means prescribed by rules;
- (6) "public demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under Part II; and
- (7) "rules" means rules and forms contained in Schedule II or made under section 48.

PART II

FILING, SERVICE AND EFFECT OF CERTIFICATES, AND HEARING OF
OBJECTIONS THERETO

Filing of
certificates
for public
demands
payable to
Collector.

Requisition
for certi-
ficate in
other cases.

4. When the Certificate-officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office.

5. (1) When any public demand payable to any person other than the Collector is due, such person may send to the Certificate-officer a written requisition in the prescribed form:

Provided that in the case of an order framed by a liquidator under the Co-operative Societies Act, 1912,² the written requisition shall be sent by the Registrar of Co-operative Societies, Bihar and Orissa.

(2) Every such requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable with a fee of the amount which would be payable under the Courts-fees Act, 1870,³ in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

1. Under article 14, section 1, of the Bihar and Orissa Co-operative Federation Act, 1923.

2. Bihar and Orissa Co-operative Federation Act, 1923.

3. Bihar and Orissa Courts Fees (Amendment) Act, 1929 (Bihar and Orissa Courts Fees (Amendment) Act, 1947).

6. On receipt of any such requisition, the Certificate-officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due; and shall include in the certificate the fee (if any) paid under section 5, sub-section (2); and shall cause the certificate to be filed in his office.

7. When a certificate has been filed in the office of a Certificate-officer under section 4 or section 6, he shall cause to be served upon the certificate-debtor, in the prescribed manner, a notice in the prescribed form and a copy of the certificate.

8. From and after the service of notice of any certificate under section 7 upon a certificate-debtor,—

(a) any private transfer or delivery of any of his immovable property situated in the district, or, in the case of a revenue-paying estate, borne on the revenue-roll of the district in which the certificate is filed, or of any interest in any such property, shall be void against any claim enforceable in execution of the certificate; and

(b) the amount due from time to time in respect of the certificate shall be a charge upon such property, to which every other charge created subsequently to the service of the said notice shall be postponed.

9. (1) The certificate-debtor may, within thirty days from the service of the notice required by section 7, or, where the notice has not been duly served, then within thirty days from the execution of any process for enforcing the certificate, present to the Certificate-officer in whose office the certificate is filed, or to the Certificate-officer who is executing the certificate, a petition, in the prescribed form, signed and verified in the prescribed manner, denying his liability, in whole or in part.

(2) If any such petition is presented to a Certificate-officer other than the Certificate-officer in whose office the original certificate is filed, it shall be sent to the latter officer for disposal.

10. The Certificate-officer in whose office the original certificate is filed shall hear the petition, take evidence (if necessary), and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed; and may set aside, modify or vary the certificate accordingly:

Provided that, if the Certificate-officer is not the Collector, and considers that the petition involves a bona fide claim of right to property, he shall refer the petition to the Collector for orders; and the Collector, if he is satisfied that a bona fide claim of right to the property is involved, shall make an order cancelling the certificate.

Filing of certificate on requisition.

Service of notice and copy of certificate on certificate-debtor.

Effect of service of notice of certificate.

Filing of petition denying liability.

Hearing and determining of such petition.

THE BIHAR AND ORISSA PUBLIC DEMANDS [B. & O. Act
(Secs. II-15)]

Power to amend certificate by addition, omission or substitution of parties.

11. Subject to the law of limitation, the Certificate-officer may at any time amend a certificate by the addition, omission or substitution of the name of any certificate-holder or certificate-debtor, or by the alteration of the amount claimed therein :
Provided that when any such amendment is made a fresh notice and copy shall be issued as provided in section 7.

Who may execute certificate.

Transmission of certificate to another Certificate-officer for execution.

When certificate may be executed.

12. A certificate filed under section 4 or section 6 may be executed by—
(a) the Certificate-officer in whose office the original certificate is filed, or
(b) the Certificate-officer to whom a copy of the certificate is sent for execution under section 13, sub-section (1).

13. (1) A Certificate-officer in whose office a certificate is filed may send a copy thereof, for execution, to any other Certificate-officer in the same district or to the Collector of any other district.
(2) When a copy of a certificate is sent to any such officer, he shall cause it to be filed in his office, and thereupon the provisions of section 8 with respect to certificates filed in the office of a Certificate-officer shall apply as if such copy were an original certificate :
Provided that it shall not be necessary to serve a second notice and copy under section 7.

14. No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice required by sections 7 and 11, or, when a petition has been duly filed under section 9, until such petition has been heard and determined.

Provided that, if the Certificate-officer in whose office a certificate is filed is satisfied that the certificate-debtor is likely to conceal, remove or dispose of the whole or any part of such of his movable property as is liable to attachment under this Act, and that the realization of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such movable property.

15. Subject to such conditions and limitations as may be prescribed, a Certificate-officer may order execution of a certificate—
(a) by attachment, and sale, if necessary, of any property, or, in the case of immovable property, by sale without previous attachment, or

(Secs. 16-18)

- (b) by arresting the certificate-debtor and detaining him in the civil prison, or
- (c) by both of the methods mentioned in clauses (a) and (b).

Explanation to clause (c).—The Certificate-officer may, in his discretion, refuse execution at the same time against the person and property of the certificate-debtor.

16. Where a revenue-paying estate or any share therein is liable to sale in execution of a certificate, such sale may be held either—

Certain sales
by whom to
be held.

- (a) by the Certificate-officer exercising jurisdiction in the district to the revenue-roll of which the estate or share appertains, or
- (b) by the Certificate-officer exercising jurisdiction in the district in which such estate or share is situated.

Provided that in the latter case previous notice of the sale shall be sent to the Collector of the district on the revenue-roll of which the estate or share is borne.

17. There shall be recoverable, in the proceedings in execution of every certificate filed under this Act,—

Interest,
costs and
charges
recoverable.

- (a) interest upon the public demand to which the certificate relates, at the rate of six and a quarter *per centum per annum* from the date of the signing of the certificate up to the date of realisation,
- (b) such costs as are directed to be paid under section 54, and
- (c) all charges incurred in respect of—
 - (i) the service of notice under section 7 and of warrants and other processes, and
 - (ii) all other proceedings taken for realising the demand.

Attachment

18. (1) The following property is liable to attachment and sale in execution of a certificate under this Act, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinabove mentioned, all other saleable property, movable or immovable, belonging to the certificate-debtor, or over which, or the profits of which, he has a disposing power which he may exercise, his own benefit, whether the same be held in the name of the certificate-debtor or by any other person in trust for him or on his behalf;

Property
liable to
attachment
and sale in
execution
of a certi-
ficate.

Provided that the following particulars shall not be liable to such attachment or sale, namely :—

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the certificate-debtor, his wife and children, and such personal ornaments, as, in accordance with religious usage, cannot be parted with by any woman;
- (b) tools of artizans, and, where the certificate-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Certificate-officer, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;
- (d) books of account;
- (e) a mere right to use for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to [pensioners of the Crown]¹, or payable out of any service family pension fund notified in the [Official Gazette]² by the [Central or any Provincial Government]³ in this behalf, and political pensions;
- (h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty;
- (i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—
 - (i) the whole of the salary where the salary does not exceed twenty rupees monthly;
 - (ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and
 - (iii) one moiety of the salary in any other case;

1. Substituted by the A. O. for "pensioners of the Government".
2. Substituted by the A. O. for "Gazette of India".
3. Substituted by the A. O. for "G. O. in C."

- (j) the pay and allowances of persons to whom the Indian Articles of War apply;
- (k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1897, for the time being applies in so far as they are declared by the said Act not to be liable to attachment;
- (l) the wages of labourers and domestic servants whether payable in money or in kind;
- (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (n) a right to future maintenance;
- (o) any allowance declared by [any Indian law in force in the Province], to be exempt from liability to attachment or sale in execution of a decree;
- (p) where the certificate-debtor is a person liable for the payment of land revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue; and
- (q) any immovable property which, under the Tenancy Law for the time being in force in the local area in which the certificate is to be executed, would not have been liable to sale had the certificate been a decree of a court of ordinary jurisdiction.

Explanation.—The particulars mentioned in clauses (p), (q), (r), (s), (t), and (o) are exempt from attachment or sale before or after they are actually payable.

(2) Nothing in this section shall be deemed—

- (a) to exempt houses and other buildings with the land and the trees thereon and the lands immovably appurtenant thereto, but necessary for their enjoyment, from attachment or sale in execution of a decree or judgment of any such Court, Building, the or Land; or
- (b) to affect the provisions of the Recovery Act or the law for the time being in force.

Partial
exemption
of agricultural
produce.

19. The [Provincial Government]¹ may, by general or special order published in the [Official Gazette]², declare that such portion of agricultural produce, or of any class of agricultural produce as may appear to the [Provincial Government]¹ to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the certificate-debtor and his family shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a certificate.

Payment of
moneys,
contrary
to attach-
ment to be
void.

20. Where an attachment has been made in execution of a certificate, any payment to the certificate-debtor of any debt, dividend or other moneys, contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Investiga-
tion by
Certificate-
officer

Investigation of claims and objections

21. (1) Where any claim is preferred to, or any objection is made to, the attachment or sale of any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale the Certificate-officer shall proceed to investigate the claim or objection.

Provided that no such investigation shall be made where the Certificate-officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Certificate-officer ordering the sale may postpone it pending the investigation of the claim or objection.

Evidence to
be adduced,
that—

22. The claimant or objector must adduce evidence to show

(a) (in the case of immovable property) at the date of the service of the notice under section 7, or

(b) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property attached.

23. Where, upon the said investigation, the Certificate-officer is satisfied that for the reason stated in the claim or objection, such property was not,—

(a) (in the case of immovable property) at the date of the service of the notice under section 7, or

(b) (in the case of movable property) at the date of the attachment,

Release of
property
from
attachment
or sale.

1 Substituted by the A. O. for "L. G."

2 Substituted by the A. O. for "L. o. G."

IV of 1914]

RECOVERY ACT, 1914
(Sects. 24-26) 473

in the possession of the certificate-debtor or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the certificate-debtor at the said date it was so in his possession, not on his own account or as his own property but on account of or in trust for some other person, or partly on his own account and partly on account of some other person.

The Certificate-officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

24. Where the Certificate-officer is satisfied that the property was, at the said date, in the possession of the certificate-debtor as his own property and not on account of any other person, or was in the occupancy of some other person paying rent to him, or in the possession of a tenant or other person, the Certificate-officer shall disallow the claim.

25. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order shall be conclusive.

26. (1) Where property is sold in execution of a certificate there shall rest in the purchaser merely the right, title and interest of the certificate-debtor at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

(3) Notwithstanding anything contained in sub-section (2), in areas in which Chapter XIV of the Bengal Tenancy Act, 1885, or Chapter XVI of the Orissa Tenancy Act, 1913, is in force, where a tenure or holding is sold in execution of a certificate for arrears of rent due in respect thereof, the tenure or holding shall, subject to the provisions of section 22 and section 26 of the said Acts, respectively, pass to the purchaser, subject to the interests defined in the said Chapters as "protected interests," but with power to annul the interests defined in the said Chapters as "incumbrances".

Provided as follows:-

(i) a registered and notified incumbrance within the meaning of the said Chapters shall not be so annulled except in the case mentioned therein; and

THE BIHAR AND ORISSA PUBLIC DEMANDS [B. & O. Act
(Secs. 27-28)]

(ii) the power to annul shall be exercisable only in the manner directed under those Chapters.

If (4) In areas in which the Chota Nagpur Tenancy Act, 1908, is ^{of} in force,

(a) the Commissioner may by order, in any case in which he may consider it desirable so to do,—
 (i) prohibit the sale of any tenure or portion thereof;
 (ii) stay any such sale for any period specified in the order;

(b) when a tenure or holding is sold in execution of a certificate for arrears of rent due in respect thereof, sub-section (1) shall not apply, but the purchaser shall acquire such right therein as if he had purchased at a sale thereof under sub-section (1) of section 208 of the Chota Nagpur Tenancy Act, 1908, in execution of decree for such arrears.]

(5) Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of sub-sections (3) and (4) shall not apply.

27. (1) No suit shall be maintained, against any person claiming title under a purchase certified by the Certificate-officer in such manner as may be prescribed, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Setting aside Sale

28. (1) Where immovable property has been sold in execution of a certificate, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Certificate-officer to set aside the sale, on his depositing—

(a) for payment to the certificate-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of six and a quarter per centum per annum, calculated from the date of the sale to the date when the deposit is made;

¹ Substituted by the Chota Nagpur Tenancy (Amendment) Act, 1920
& O. Act VT of 1920, s. 71.

(Secs. 29-31)

- (b) for payment to the purchaser, as penalty, a sum equal to ten per cent. of the purchase-money, but not less than one rupee; and
- (c) for payment to the Collector (where the certificate is for a public demand payable to the Collector), such outstanding charges due to [the Crown]¹ under any law for the time being in force as the Collector certifies to be payable by the certificate-debtor.

(2) Where a person makes an application under section 29 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this section.

29. (1) Where immovable property has been sold in execution of a certificate, the certificate-holder, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within sixty days from the date of the sale, apply to the Certificate-officer to set aside the sale on the ground that notice was not served under section 7 or on the ground of a material irregularity in the certificate proceedings or in publishing or conducting the sale :

Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

Provided as follows :-

- (a) no sale shall be set aside on the ground of any such material irregularity unless the Certificate-officer is satisfied that the applicant has sustained substantial injury thereby; and
- (b) before the Certificate-officer passes an order setting aside a sale under this section he shall require the certificate-debtor to pay the amount actually found due from him.

(2) Notwithstanding anything contained in sub-section (1) the Certificate-officer may entertain an application made after the expiry of sixty days from the date of the sale if he is satisfied that there are reasonable grounds for so doing.

30. The purchaser at any sale of immovable property in execution of a certificate may, at any time within sixty days from the date of the sale, apply to the Certificate-officer to set aside the sale on the ground that the certificate-debtor had no saleable interest in the property sold, or that the property did not exist at the time of the sale, or that the purchaser has suffered substantial injury owing to any misdescription in the sale proclamation of the interest of the certificate-debtor in the property sold.

Application to set aside sale on ground that certificate-debtor had no saleable interest or that property did not exist.

29
the
thereupon the sale shall, subject to the provisions of sub section (2) of section 29, become absolute.

28, section disallowed, the sale, and

Sale when to become absolute or be set aside.

1. Substituted by the A. O. for "the Government".

(2) Where such an application is made and allowed, and where, in the case of an application under section 28, the deposit required by that section is made within thirty days from the date of the sale, the Certificate-officer shall make an order setting aside the sale :
Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

Disposal of proceeds of execution.

32. (1) Whenever assets are realised, by sale or otherwise, in execution of a certificate, they shall be disposed of in the following manner :—

- (a) there shall first be paid to the certificate-holder the costs incurred by him ;
- (b) there shall, in the next place, be paid to the certificate-holder the amount due to him under the certificate in execution of which the assets were realised ;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the certificate-holder under the procedure provided by this Act which may be due to him upon the date upon which the assets were realised ; and
- (d) the balance (if any) remaining after the payment of the amount (if any) referred to in clause (c) shall be paid to the certificate-debtor.

(2) If the certificate debtor disputes any claim made by the certificate-holder to receive any amount referred to in clause (c), the Certificate-officer shall determine the dispute.

Obstruction of Possession after Sale

33. (1) If the purchaser of any immovable property sold in execution of a certificate is resisted or obstructed by any person in obtaining possession of the property he may apply to the Certificate-officer.

(2) The Certificate-officer shall fix a day for investigating the matter, and shall summon the party against whom the application is made to appear and answer the same.

34. (1) If the Certificate-officer is satisfied that the resistance or obstruction was occasioned without any just cause by the certificate-debtor or by some person on his behalf, he shall direct that the applicant be put into possession of the property ; and, if the applicant is still resisted or obstructed in obtaining possession, the Certificate-officer may also, at the instance of the applicant, order the certificate-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days.

(2) If the Certificate-officer is satisfied that the resistance or obstruction was occasioned by any person (other than the certificate-debtor) claiming in good faith to be in possession of the property on

Application by purchaser resisted or obstructed in obtaining possession of immovable property.

Procedure on such application.

(Secs. 35-39)

his own account or on account of some person other than the certificate-debtor, the Certificate-officer shall make an order dismissing the application.

35. (1) Where any person, other than the certificate-debtor, is dispossessed by the purchaser of immoveable property which has been sold in execution of a certificate, he may make application to the Certificate-officer complaining of such dispossession; Dispossession by purchaser.

(2) the Certificate-officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

36. Where the Certificate-officer is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the certificate-debtor, he shall direct that the applicant be put into possession of the property.

37. Any person, not being a certificate-debtor, against whom an order is made under section 36 or section 34, sub-section (2), may institute a suit in a Civil Court to establish the right which he claims to the present possession of the property; but subject to the result of such suit (if any) the order shall be conclusive.

Arrest, Detention and Release

38. A certificate-debtor may be arrested in execution of a certificate at any hour and on any day, except as provided in section 56, and, when so arrested, shall, as soon as practicable, be brought before the Certificate-officer; and his detention may be in the civil prison of the district in which the Certificate-officer ordering the detention exercises jurisdiction, or, where such civil prison does not afford suitable accommodation, in any other place which the Provincial Government¹ may appoint for the detention of persons ordered by the Civil Courts of such district to be detained:

Provided that, if the amount entered in the warrant of arrest as due under the certificate, and the costs of the arrest, have been paid either to the Certificate-officer or to the officer arresting the certificate-debtor, such officer shall at once release him.

39. (1) The Collector may order the release of a certificate-debtor who has been arrested in execution of a certificate, upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Certificate-officer and that he has not committed any act of bad faith.

(2) If the Certificate-officer has ground for believing the disclosure made by a certificate-debtor under sub-section (1) to have been untrue, he may order the re-arrest of the certificate-debtor in

1. Substituted by the A. O. for "L. G."

Bona fide claimant to be restored to possession.

Orders conclusive subject to suit in Civil Court.

Power of arrest and detention.

Release from arrest and re-arrest.

execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorized by section 40, sub-section (1) :

Provided that if such order is passed by a Certificate-officer other than the Collector, the previous sanction of the Collector shall be necessary.

*Detention
in, and
release from,
prison.*

40. (1) Every person detained in the civil prison in execution of a certificate may be so detained,—

(a) where the certificate is for a demand of an amount exceeding fifty rupees—for a period of six months, and

(b) in any other case—for a period of six weeks:

Provided that he shall be released from such detention—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the certificate being otherwise fully satisfied, or cancelled, or

(iii) on the request of the person (if any) on whose requisition the certificate was filed or of the Collector, or

(iv) on the omission by the person (if any) on whose requisition the certificate was filed to pay the subsistence allowance fixed by the Certificate-officer:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of the Certificate-officer.

(2) A certificate-debtor released from detention under this section shall not, merely by reason of his release, be discharged from his debt; but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

41. (1) At any time after a warrant for the arrest of a certificate-debtor has been issued, the Certificate-officer may cancel it on the ground of his serious illness.

(2) Where a certificate-debtor has been arrested, the Certificate-officer may release him if, in the opinion of the Certificate-officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a certificate-debtor has been committed to the civil prison, he may be released therefrom—

(a) by the Collector, on the ground of the existence of any infectious or contagious disease, or

*Release on
ground of
illness.*

- (b) by the Certificate-officer, or the Collector, on the ground of his suffering from any serious illness.
- (4) A certificate-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorized by section 40, sub. section (1).

42. Notwithstanding anything in this Act, the Certificate-officer shall not order the arrest or detention in the civil prison of—

- (a) a woman, or
 (b) any person who, in his opinion, is a minor or of unsound mind.

Prohibition
of arrest or
detention of
women and
persons
under dis-
ability.

PART IV

REFERENCE TO CIVIL COURT

43. The certificate-debtor may, at any time within six months—

- (1) from the service upon him of the notice required by section 7, or
 (2) if he files, in accordance with section 9, a petition denying liability—from the date of the determination of the petition, or

Suit in Civil
Court to
have certi-
ficate can-
celled or
modified.

- (3) if he appeals, in accordance with section 60, from an order passed under section 10—from the date of the decision of such appeal,

bring a suit in a Civil Court to have the certificate cancelled or modified, and for any further consequential relief to which he may be entitled:

Provided that no such suit shall be entertained—

- (a) in any case, if the certificate-debtor has omitted to file, in accordance with section 9 a petition denying liability the ground or to state in his petition denying liability the ground upon which he claims to have the certificate cancelled or modified, and cannot satisfy the Court that there was good reason for the omission, or
- (b) in the case of a certificate for a demand mentioned in Article 1 or Article 2 of Schedule I, if the certificate-debtor has not paid the amount due under the certificate to the Certificate-officer—

- (i) within thirty days from the service of the notice required by section 7, or

- (ii) if he has filed, in accordance with section 9, a petition denying liability—then within thirty days from the date of the determination of the petition, or

(iii) if he has appealed in accordance with section 60—the within thirty days from the decision of the appeal:

Provided also that no sale in execution of a certificate shall be set aside in such a suit unless the purchaser has been made a party to the suit and until a direction is made for the refund of the amount of the purchase-money, with such interest (if any) as the Court may allow.

Grounds for cancellation or modification of certificate by Civil Court.

44. (1) No certificate duly filed under this Act shall be cancelled by a Civil Court, except on one of the following grounds, namely:—

- that the amount stated in the certificate was actually paid or discharged before the signing of the certificate;
- that no part of the amount stated in the certificate was due by the certificate-debtor to the certificate-holder;
- that, in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by Collector or a public officer under any law or any rule having the force of law, the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such law or rule, and that in consequence the certificate-debtor suffered substantial injury from some error, defect or irregularity in such proceedings.

(2) No certificate duly filed under this Act shall be modified by a Civil Court, except on one of the following grounds, namely:—

- that a portion of the alleged debt was not due; or
- that the certificate-debtor has not received credit for any portion which he has paid.

45. Notwithstanding anything hereinbefore contained, a sale of immovable property in execution of a certificate shall not be held to be void on the ground that the notice required by section 7 has not been served; but a suit may be brought in a Civil Court to recover possession of such property or to set aside such sale on the ground that such notice has not been served:

Provided that no such suit shall be entertained—

- if instituted more than one year from the date on which possession of the property was delivered to the purchaser, or
- if the certificate-debtor has made appearance in the certificate proceeding, or has applied to the Certificate-officer under section 28 to set aside the sale.

Suit to recover possession of, or to set aside sale of, immovable property where notice of certificate not served.

(Sects. 46-48)

46. Except as otherwise expressly provided in this Act, every question arising between the certificate-holder and the certificate-debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Certificate-officer before whom such question arises, or of such other Certificate-officer as he may determine :

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

General bar
to jurisdiction
of Civil Courts, save
where fraud
alleged.

PART V

RULES

47. The rules in Schedule II shall have effect as if enacted in the body of this Act, until altered or annulled in accordance with the provisions of this Part.

Effect of
rules in
Schedule II.

48. (1) The Board of Revenue may, after previous publication and with the previous sanction of the [Provincial Government]¹, make rules regulating the procedure to be followed by persons making requisitions under section 5 and by Collectors and Certificate-officers acting under this Act ; and may, by such rules, alter, add to or annul any of the rules in Schedule II.

Power of
Board of
Revenue to
make rules
as to
procedure.

(2) Such rules shall not be inconsistent with the provisions in the body of this Act, but, subject thereto, may, in particular, and without prejudice to the generality of the power conferred by sub-section (1), provide for all or any of the following matters, namely :—

- (a) the signature and verification of requisitions made under section 5 ;
- (b) the Certificate-officers to whom such requisitions should be addressed ;
- (c) the cases in which such requisitions shall not be chargeable with a fee ;
- (d) the service of notices issued under section 7, the service of other notices or processes issued under this Act and the manner in which service may be proved ;
- (e) the signing and verification of petitions, under section 9, denying liability ;
- (f) the transfer of such petitions to other officers for disposal ;

1. Substituted by the A. O. for "L. G."

THE BIHAR AND ORISSA PUBLIC LANDS [B. & O. ACT
(Secs. 44-45)

(iii) if he has appealed in accordance with section 60—then within thirty days from the decision of the appeal:

Provided also that no sale in execution of a certificate shall be set aside in such a suit unless the purchaser has been made a party to the suit and until a direction is made for the refund of the amount of the purchase-money, with such interest (if any) as the Court may allow.

Grounds for cancellation or modification of certificate by Civil Court.

44. (1) No certificate duly filed under this Act shall be cancelled by a Civil Court, except on one of the following grounds, namely:—

- (a) that the amount stated in the certificate was actually paid or discharged before the signing of the certificate;
- (b) that no part of the amount stated in the certificate was due by the certificate-debtor to the certificate-holder;
- (c) that, in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a public officer under any law or any rule having the force of law, the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such law or rule, and that in consequence the certificate-debtor suffered substantial injury from some error, defect or irregularity in such proceedings.

(2) No certificate duly filed under this Act shall be modified by a Civil Court, except on one of the following grounds, namely:—

- (i) that a portion of the alleged debt was not due; or
- (ii) that the certificate-debtor has not received credit for any portion which he has paid.

45. Notwithstanding anything hereinbefore contained, a sale of immovable property in execution of a certificate shall not be held to be void on the ground that the notice required by section 7 has not been served; but a suit may be brought in a Civil Court to recover possession of such property or to set aside such sale on the ground that such notice has not been served:

Provided that no such suit shall be entertained—

- (a) if instituted more than one year from the date on which possession of the property was delivered to the purchaser, or
- (b) if the certificate debtor has made appearance in the certificate proceeding, or has applied to the Certificate officer under section 23 to set aside the sale.

Suit to recover possession of, or to set aside sale of, immovable property where notice of certificate not served.

(Secs. 46-48)

46. Except as otherwise expressly provided in this Act, every question arising between the certificate-holder and the certificate-debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Certificate-officer before whom such question arises, or of such other Certificate-officer as he may determine :

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

General bar to jurisdiction of Civil Courts, save where fraud alleged.

PART V

RULES

47. The rules in Schedule II shall have effect as if enacted in the body of this Act, until altered or annulled in accordance with the provisions of this Part.

Effect of rules in Schedule II.

48. (1) The Board of Revenue may, after previous publication and with the previous sanction of the [Provincial Government]¹, make rules regulating the procedure to be followed by persons making requisitions under section 5 and by Collectors and Certificate-officers acting under this Act ; and may, by such rules, alter, add to or annul any of the rules in Schedule II.

Power of Board of Revenue to make rules as to procedure.

(2) Such rules shall not be inconsistent with the provisions in the body of this Act, but, subject thereto, may, in particular, and without prejudice to the generality of the power conferred by sub-section (1), provide for all or any of the following matters, namely :—

- (a) the signature and verification of requisitions made under section 5 ;
- (b) the Certificate-officers to whom such requisitions should be addressed ;
- (c) the cases in which such requisitions shall not be chargeable with a fee ;
- (d) the service of notices issued under section 7, the service of other notices or processes issued under this Act and the manner in which service may be proved ;
- (e) the signing and verification of petitions, under section 9, denying liability ;
- (f) the transfer of such petitions to other officers for disposal ;

1. Substituted by the A. O. for "L. G."

(Secs. 49-52)

- (g) the scale of charges to be recovered under section 17, clause (c);
- (h) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees to be charged for such maintenance and custody, the sale of such live-stock and property, and the disposal of the proceeds of such sale;
- (i) the registers, books and accounts to be kept by Certificate-officers, and the inspection thereof by the public;
- (j) the fee to be charged for the inspection of the register certificates maintained under rule 55 in Schedule II;
- (k) the recovery of expenditure on the certificate establishment by the levy of costs under section 17, clause (b), and section 54;
- (l) the recovery of poundage fees;
- (m) the forms to be used under this Act.

Publication
and effect of
rules made
under sec.
tion 48.

49. (1) Rules made and sanctioned under section 48 shall be published in the [Official Gazette]¹, and shall, from the date of publication or from such other date as may be specified, have the same force and effect as if they had been contained in Schedule II.

(2) All references in this Act to the said Schedule II shall be construed as referring to that Schedule as for the time being amended by such rules.

PART VI SUPPLEMENTAL PROVISIONS

50. Where the Certificate-officer is satisfied that the certificate-debtor is a minor or of unsound mind, he shall, in any proceeding under this Act, permit him to be represented by any suitable person.

51. No certificate shall cease to be in force by reason of—
(a) the property to which the demand relates ceasing to be under the charge or management of the Court of Wards or the Revenue-authorities; or
(b) the death of the certificate-holder.

52. (1) Where a certificate-debtor dies before the certificate has been fully satisfied, the Certificate-officer may, after serving upon the legal representative of the deceased a notice in the prescribed form, proceed to execute the certificate against such legal representative; and the provisions of this Act shall apply as if such legal representative were the certificate-debtor and as if such notice were a notice under section 7:

¹. Substituted by the A. O. for "Bihar and Orissa Gazette".

Continuance
of certi-
ficates

Procedure
on death of
debtor

(Secs. 53-55A)

Provided that where the certificate is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Certificate-officer executing the certificate may, of his own motion or on the application of the certificate-holder, compel such legal representative to produce such accounts as the Certificate-officer thinks fit.

(2) For the purposes of this section, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a certificate has been filed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

53. (1) The Certificate-officer shall cancel any certificate at the request of the certificate-holder.

Cancellation
of certi-
ficates.

(2) The Certificate-officer may cancel any certificate filed under section 6 if the certificate-holder is not reasonably diligent.

54. Subject to such limitation as may be prescribed, the award of any costs of, and incidental to, any proceeding under this Act shall be in the discretion of the officer presiding, and he shall have full power to direct by whom and to what extent such costs shall be paid.

Costs.

55. If the Certificate-officer is satisfied that any requisition under section 5 was made without reasonable cause, he may award to the certificate-debtor such compensation as the Certificate-officer thinks fit;

Compensa-
tion.

and the amount so awarded shall be recoverable from the certificate-holder under the procedure provided by this Act for recovery of costs.

55A. (1) When the order of a Certificate-officer is set aside or modified by reason of any order passed under section 60, 62 or 63 the Certificate-officer shall have full power to give effect to such order and may for that purpose direct that the certificate-debtor shall be of the order the certi- such com-

Restitution
consequent
on reversal
or modifica-
tion of
order.

(2) An order passed under sub-section (1) shall for the purposes of section 60 be deemed to be an original order.]

1. Inserted by the Bihar and Orissa Public Demands Recovery ("
ment) Act, 1928 (B. & O. Act III of 1928), s. 2.

Entry into
dwelling-
house.

56. (1) No person executing any warrant of arrest issued under this Act, or any process issued under this Act directing or authorizing the attachment of movable property, shall enter any dwelling-house after sunset or before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless the dwelling-house or a portion thereof is in the occupancy of the certificate-debtor and he or any other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant or other process has duly gained access to any dwelling-house, he may break open the door of any room and enter, if he has reason to believe that entering into the room is necessary in order to enable him to execute the process.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of executing the process; and if the process be for the attachment of property, he may at the same time use every precaution, consistent with this section, to prevent its clandestine removal.

Application
of Act
XVIII of
1850.

57. Every Collector, Certificate-officer, Assistant Collector or Deputy Collector acting under this Act, and every Government officer making a requisition under section 5, shall, in the discharge of his functions under this Act, be deemed to be acting judicially within the meaning of the Judicial Officers' Protection Act, 1850.

Officers to
have powers
of Civil
Court for
certain
purposes.

58. Every Collector, Certificate-officer, Assistant Collector or Deputy Collector acting under this Act, shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the production of documents.

Control over
officers.

59. All Certificate-officers (not being Collectors), Assistant Collectors and Deputy Collectors shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Collector.

Appeal.

60. (1) An appeal from any original order made under this Act shall lie—

- (a) if the order was made by an Assistant Collector or a Deputy Collector, or by a Certificate-officer not being the Collector,—to the Collector; or,
- (b) if the order was made by the Commissioner;—to the

(Secs. 61-65)

Provided that no appeal shall lie from any order setting aside a sale on an application made under section 28.

(2) Every such appeal must be presented, in case (a), within fifteen days, or, in case (b), within thirty days, from the date of the order.

(3) The Collector may, by order, with the previous sanction of the Commissioner, authorize—

- (i) any Subdivisional Officer ; or,
(ii) any officer appointed under clause (3) of section 3 to perform the functions of a Certificate-officer.

to exercise the appellate powers of the Collector under sub-section (1).

(f) When any officer has been so authorized, the Collector may transfer to him for hearing any appeal referred to in clause (a) of sub-section (1), unless the order appealed against was made by such officer.

(5) Pending the decision of any appeal, execution may be stayed if the appellate authority so directs, but not otherwise.

61. No appeal shall lie from any order of a Collector, or an officer authorized under section 60, sub-section (3), when passed on appeal.

Bar to
second
appeals.

62. The Collector may revise any order passed by a Certificate-officer, Assistant Collector, or Deputy Collector under this Act;

Revision.

the Commissioner may revise any order passed by a Collector under this Act;

and the Board of Revenue may revise any order passed by a Commissioner under this Act.

63. Any order passed under this Act may, after notice to all officer who made the order, or mistake or error either in the use of any proceeding under this Act

Review.

64. The powers given by this Act shall be deemed to be in relation to, and exercisable in respect of, any matter or demand except where otherwise provided in this Act.

Saving of other Acts.

^{65.} (1) Sections 6 to 9 of the Indian Limitation Act, 1908,¹ shall not apply to suits, appeals or applications under this Act.

*Limitation
Act, 1908.*

*Certificate
of Officer
seemed to
go to Court.*

Finality

Signature of
documents
by minis.
erial
officers.

monde.
ents o
engal
'enancy
ct, 1885
ie Orissa
'enancy
ct, 1913 ;
od the
hota
Jagpur
'enancy
ct, 1908.

77. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, from being thereby taken in execution of a certificate, shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code.

78. (1) Any Certificate-officer may, by written order, authorize any ministerial officer to sign, on behalf of the Certificate-officer, any copy, issued by the Certificate-officer under this Act, of any document referred to therein.

(2) The [Provincial Government]: may, by written order, empower Certificate-officers, by written order, to sign copies of original notices, certificates,

(2) The [Provincial Government]: may, by notification in the [Official Gazette]³, empower Certificate-officers to authorize ministerial officers, by written order, to sign on behalf of Certificate-officers any classes of original notices, summonses or proclamations issued by Certificate-officers under this Act which are specified in such notification.

SCHEDULE I

SCHEDULE I

PUBLIC DEMANDS

[See sections 3.(6) and 13, proviso (b)]

1. Any arrear of revenue which results from circumstances, namely:

1. Any arrear of revenue which remains due in the following circumstances, namely :—

an estate or tenure, has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may, under the said provisions, be applied.

859. 2. Any arrear of revenue which is due from a farmer on account of an estate held by him in farm, and is not paid on the latest day of payment fixed under section 3 of the said Bengal Land-revenue Sales Act, 1859.¹

3. Any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process authorized for the recovery of arrears of revenue or of the public revenue or of Government revenue.

4. Any money which is declared by any enactment for the time being in force—

(i) to be a demand or a public demand; or,

(ii) to be recoverable as arrears of a demand or public demand, or as a demand or public demand; or,

(iii) to be recoverable under the Bengal Land-revenue Sales Act, 1868.²

5. Any money due from the sureties of a farmer in respect of the revenue of the estate farmed by him.

6. Any money awarded as fees or costs by a Revenue-authority under any law or any rule having the force of law.

7. Any demand payable to the Collector by a person holding any interest in land, pasturage, forest-rights, fisheries or the like, whether such interest is or is not transferable, when such demand is a condition of the use and enjoyment of such land, pasturage, forest-rights, fisheries or other things.

8. In the case of property which, under the provisions of any law for the time being in force, is under the charge of, or is managed by, the Court of Wards or the Revenue-authorities on behalf of a private individual—any arrear of rent, or of any demand which is recoverable as rent, whether such arrear became due before or after the management devolved upon such Court or such authorities:

Provided that this clause shall not apply to any arrears of rent at an enhanced rate unless such enhanced rate has been agreed to by the person liable to pay the same, or has been confirmed by a competent Court.

9. Any money payable to a servant of the Crown³ or any local authority, in respect of which the person liable to pay the same has

1. Printed in this Code, Vol. I, p. 337.

2. Printed in this Code, Vol. II, p. 67.

3. Substituted by the A. O. for "Government Officer".

THE BIHAR AND ORISSA PUBLIC DEMANDS (B. & O. A.
(Schedule II)

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- agreed, by a written instrument duly registered, that it shall be recoverable as a public demand.
10. Any stamp duty payable by a proprietor in respect of a paper of partition prepared under the Estates Partition Act, 1897.¹
11. In the case of a person to whom the collection of tolls has been farmed under section 8 of the Canals Act, 1864,² or of the securities of such person—any money due in respect of such farm.
12. Any money awarded as compensation under section 2 of the Bengal Land-revenue Sales Act, 1868.³
13. Any money due from a purchaser at a sale held in execution of a certificate under this Act, whether the sale is subsisting or not.
14. Any money ordered by a liquidator appointed under section 42 of the Co-operative Societies Act, 1912⁴, to be recovered as a contribution to the assets of a society or as the costs of liquidation.

SCHEDULE II

RULES

(See section 47)

SIGNATURE AND VERIFICATION OF REQUISITIONS FOR CERTIFICATES

Signature
and verifica-
tion of
requisitions
for certi-
ficates.

1. (1) Every requisition made under section 5 shall be signed and verified at the foot by the person making it, or by some other person on his behalf who is proved to the satisfaction of the Certificate-officer to be acquainted with the facts of the case.
- (2) The verification shall state that the person signing the requisition has been satisfied by inquiry that the amount stated in the requisition is actually due.
- (3) The verification shall be signed by the person making it, and shall state the date on which it is signed.

SERVICE OF NOTICES

2. Service of a notice issued under section 7, or under any other provision of this Act, shall be made by delivering or tendering a copy thereof, signed by the Certificate-officer or such ministerial officer as he authorizes in this behalf, and sealed with the seal of the Certificate-officer.

1. Printed in this Code, Vol. II, p. 381.

2. Printed *ibid.*, p. 15.

3. Printed *ibid.*, p. 67.

4. See now the Bihar and Orissa Co-operative Societies Act, 1935 (B. & O. Act VI of 1935), printed post.

(Schedule II)

3. Wherever it is practicable, service shall be made on the certificate-debtor in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

4. Where the certificate-debtor cannot be found, and has no agent empowered to accept service of the notice on his behalf, service may be made on any adult male member of the family of the certificate-debtor who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

5. Where the serving officer delivers or tenders a copy of the notice to the certificate-debtor personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original notice.

6. Where the certificate-debtor or his agent, or such other person as aforesaid, refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the certificate-debtor, and there is no agent empowered to accept service of the notice on his behalf, nor any other person on whom service can be made, the serving officer shall—

(a) affix a copy of the notice on the outer door or some other conspicuous part of the house in which the certificate-debtor ordinarily resides or carries on business or personally works for gain; or,

(b) if there be land affected by the notice, affix a copy of the notice on some conspicuous place in the office of the Certificate-officer and also on some conspicuous part of land,

and shall then return the original to the Certificate-officer by whom it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house or land was identified and in whose presence the copy was affixed.

7. The serving officer shall, in all cases in which the notice has been served under rule 5, endorse or annex, or cause to be endorsed or annexed, on or to the original notice, a return stating the time when and the manner in which the notice was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the notice.

8. Where a notice is returned under rule 6, the Certificate-officer shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Certificate-officer, or, subject to any general order of the Collector, by an Assistant Collector, Deputy Collector or Sub-Deputy Collector, touching his proceedings, and may make such further

Service of
debtor or
his agent.

Service or
adult male
member of
certificate-
debtor's
family.

Person
served to
sign
acknow.
leggment.

Procedure
where certi-
ficate-debtor
refuses to
accept
service or
cannot be
found.

Endorse-
ment of time
and
manner of
service.

Examina-
tion of
serving
officer.

inquiry in the matter as he thinks fit; and shall either declare that the notice has been duly served or order such service as he thinks fit.

9. Notwithstanding anything hereinbefore contained, the notice may, if the Certificate-officer so directs, be served by post.

PETITIONS UNDER SECTION 9. DENYING LIABILITY

10. (1) Every petition filed under section 9, denying liability, shall be signed and verified at the foot by the certificate-debtor or by some other person on his behalf who is proved to the satisfaction of the Certificate-officer to be acquainted with the facts of the case.

(2) The verification shall be signed by the person making it, and shall state the date on which it is signed.

11. (1) The Certificate-officer may, subject to any general or special order of the Collector, transfer to any Assistant Collector or Deputy Collector subordinate to the Collector any petition filed under section 9; and such Assistant Collector or Deputy Collector shall hear and determine such petition accordingly:

Provided that the Collector may re-transfer any petition so transferred, and order that it be heard and determined by the Certificate-officer.

(2) The provisions of section 10 shall be applicable to any Assistant transferred under sub-rule (1).

EXECUTION OF CERTIFICATES

12. Where a copy of a certificate is sent for execution to the Collector of another district under section 13, sub-section (1), the certificate may be executed by him or may be transferred by him to any Certificate-officer in his district.

Attachment

13. Where the property to be attached is movable property (other than agricultural produce) in the possession of the certificate-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Execution in another district.

Attachment of movable property (other than agricultural produce) in possession of certificate-debtor.

(Schedule II)

14. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

Attachment
of agricul-
tural
produce.

(a) where such produce is a growing crop—on the land on which such crop has grown, or

(b) where such produce has been cut or gathered—on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the certificate-debtor ordinarily resides, or, with the leave of the Certificate-officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain;

and the produce shall thereupon be deemed to have passed into the possession of the Certificate-officer.

15. (1) Where agricultural produce is attached, the Certificate-officer shall make such arrangements for the custody thereof as he may deem sufficient, and, when the produce is a growing crop, shall have regard to the time at which it is likely to be fit to be cut or gathered.

Provisions
as to
agricultural
produce
under
attachment.

(2) Subject to such conditions as may be imposed by the Certificate-officer in this behalf either in the order of attachment or in any subsequent order, the certificate-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and, if the certificate-debtor fails to do all or any of such acts, the certificate-holder may, with the permission of the Certificate-officer, do all or any of such conditions, appointed by him in this certificate, and the certificate-holder shall be recoverable from the certificate-debtor as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the certificate-officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

THE BIHAR AND ORISSA PUBLIC DEMANDS [B. & O. Act
(Schedule II)]

Attachment
of debt,
share, and
other
movable
property not
in posse.
tion of certi-
ficate-debtors.

16. (1) In the case of—
 (a) a debt not secured by a negotiable instrument, or
 (b) a share in the capital of a Corporation, or
 (c) other movable property not in the possession of the certificate-debtor, except property deposited in, or in the custody of, any Court,
 the attachment shall be made by a written order prohibiting—
 (i) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Certificate-officer;
 (ii) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
 (iii) in the case of the other movable property (except as aforesaid)—the person in possession of the same from giving it over to the certificate-debtor.

- (2) A copy of such order shall be affixed on some conspicuous part of the office of the Certificate-officer, and another copy shall be sent, in the case of the debt, to the debtor, and, in the case of the share, to the proper officer of the Corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.
- (3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Certificate-officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

17. Where the property to be attached consists of the share or interest of the certificate-debtor in movable property belonging to him and another as co-owners, the prohibiting him from transferring the share or interest or changing it in any way.

18. (1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a Railway Company or Local Authority, the Certificate-officer, whether the certificate-debtor or the disbursing officer¹ is or is not within the local limits of the Certificate-officer's jurisdiction, may order that the amount shall be withheld from such salary or allowances, either in one payment or by monthly instalments as the Certificate-officer may direct; and, upon notice of the order to such officer as the [Provincial Government]² appoint, in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Certificate-officer the amount due under the order, or the monthly instalments, as the case may be.

¹ Substituted by the A. O. for "L.G."

² Substituted by the A. O. for "Bihar and Orissa Gazette".

Attachment
of share in
movables.

Attachment
of salary or
allowances
of public
officer or
servant
of Railway
Company or
Local
Authority.

(Schedule II)

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Certificate-officer or to a Civil Court in pursuance of a previous and unsatisfied order of [Government]¹ in "to the Certificate-particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall without further notice or other process, bind the Government or the Railway Company or Local Authority, as the case may be; and the Government or the Railway Company or Local Authority, as the case may be, shall be liable for any sum paid in contravention of this rule. [In this sub-rule "the Government" means the Central Government, the Provincial Government, or the Federal Railway Authority, as the case may require]².

19. Where the property is a negotiable instrument not deposited in a Court nor in the custody of a public officer, the attachment shall be made by actual seizure and the instrument shall be brought before the Certificate-officer and held subject to his orders.

Attachment
of negotiable
instruments.

20. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Certificate-officer by whom the notice is issued:

Attachment
of property
in custody
of Court
or public
officer.

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the certificate-holder and any other person, not being the certificate-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

21. (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge the attachment shall be made by the issue to the Civil Court of a notice requesting the Civil Court to stay the execution of the decree unless and until—

Attachment
of decrees.

- (i) the Certificate-officer cancels the notice, or
- (ii) the certificate-holder or the certificate-debtor applies to the Court receiving such notice to execute the decree.

(2) Where a Civil Court receives an application under clause (iii) of sub-section (1) it shall, on the application of the certificate-holder

1. Substituted by the A. O. for "L. G."

2. Inserted by the A. O.

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(Schedule II)

or the certificate-debtor, and subject to the provisions of the Code of Civil Procedure, 1908, proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

- (3) The certificate-holder shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.
22. Where the property is immovable, no attachment need be made before sale.

23. Where—

- (a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to a sale, are paid to the Certificate-officer, or
(b) the certificate is cancelled,
the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the certificate-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by rule 26, sub-rule (1).

Sale generally

24. Any Certificate-officer executing a certificate may order that any property liable to sale, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

25. (1) Where any immovable property, or any movable property exceeding twenty rupees in value, is ordered to be sold by public auction, the Certificate-officer shall cause a proclamation of the intended sale to be made in the language of the Courts of the district.

- (2) Such proclamation shall be drawn up after notice to the certificate-debtor and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,—

- (a) the property to be sold,

- (b) (where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government) the revenue assessed upon the estate or part of the estate;

- (c) the amount for the recovery of which the sale is ordered; and

- (d) every other thing which the Certificate-officer considers it material for a purchaser to know in order to judge of the nature and value of the property.

Attachment of immovable property.

Removal of attachment on satisfaction or cancellation of certificate.

Power to order sale of attached property.

Proclamation of sale by public auction.

(Schedule II)

(3) Where a tenure, or a raiyati holding at fixed rates, situated in an area in which *Chapter XIV of the Bengal Tenancy Act, 1885¹*, or Chapter XVI of the Orissa Tenancy Act, 1913², is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the tenure or holding will first be put up to auction subject to registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount specified in the certificate, and costs, and that otherwise it will, if the certificate-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances.

(4) Where an occupancy holding, situated in an area in which *Chapter XIV of the Bengal Tenancy Act, 1885¹*, or Chapter XVI of the Orissa Tenancy Act, 1913², is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the holding will be sold with power to annul all incumbrances.

(5) Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of sub-rules (3) and (4) shall not apply.

(6) For the purpose of ascertaining the matters to be specified in the proclamation, the Certificate-officer may summon any person whom he thinks necessary to summon, and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

26. (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the office of the Certificate-officer. A copy of the proclamation shall also be sent by registered post to the certificate-debtor.

Mode of
making pro-
clamation.

(2) Where the Certificate-officer so directs, such proclamation shall also be published in the [Official Gazette]³ or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(3) If a tenure, a raiyati holding holding situated in an area in which *Tenancy Act, 1885¹*, or Chapter XVI of is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the proclamation shall also be published in the Malkachari or rent office of the estate and at the local thana.

(4) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Certificate-officer, otherwise be given.

1. Printed in Bengal Code, 1939, Vol. I, p. 551.

2. Printed ante, p. 7.

3. Substituted by the A. O. for "Bihar and Orissa Gazette".

Time of
sale.

27. Save in the case of property of the kind described in the proviso to rule 13, no sale hereunder shall, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days in the case of immovable property, or of at least fifteen days in the case of movable property exceeding twenty rupees in value, calculated from the date on which a copy of a sale proclamation has been affixed in a conspicuous part of the office of the Certificate-officer:

Provided that if a tenure, a raiyati holding at fixed rates or an occupancy holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, or Chapter XVI of the Orissa Tenancy Act, 1913¹, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the sale shall not, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days, calculated from—

- (a) the date on which a copy of the sale proclamation has been affixed in a conspicuous part of the office of the Certificate-officer, or
- (b) the date on which the sale proclamation has been published in the Malkachari or rent office of the estate and at the local thana,

whichever is later.

28. (1) The Certificate-officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the office of the Certificate-officer, no such adjournment shall be made without the leave of the Certificate-officer.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 26 shall be made, unless the certificate-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid to the Certificate-officer who ordered the sale.

29. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Certificate-officer by the officer or other person holding the sale, and shall, at the instance of either the certificate-holder or the certificate-debtor, be recoverable from the defaulting purchaser under the procedure provided by this Act.

Defaulter
purchaser
immovable
or loss on
a sale.

1. Printed in Bengal Code, 1912, Vol. I, p. 57.
2. Printed ante, p. 7.

(Schedule II)

30. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Restriction
on bidding
or purchase
by officers.

Sale of movable property

31. (1) Where the property to be sold is agricultural produce, the sale shall be held—

Sale of agri-
cultural pro-
duce.

- (a) if such produce is a growing crop—on or near the land on which such crop has grown, or
- (b) if such produce has been cut or gathered—at or near the threshing-floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited :

Provided that the Certificate-officer may direct the sale to be held at the nearest place of public resort if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

- (a) a fair price, in the estimation of the person holding the sale, is not offered for it; and
- (b) the owner of the produce, or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

Special ser-
vices
relating
to growing
crops.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered; and the Certificate-officer is directed to do all that may be necessary for cutting and gathering the

33. (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon as the officer or other person holding the sale directs, and in payment the property shall forthwith be received.

(2) On payment of the price of any property sold by public auction, the

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(Schedule II)]

(3) Where the movable property to be sold is a share in goods belonging to the certificate-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively, bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity
not to
vitiatesale,
but any
person
injured may
sue.

34. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a Civil Court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of
movable
property,
debts and
shares.

35. (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the certificate-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession, prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a Corporation, the delivery thereof shall be made by a written order of the Certificate-officer prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except to the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser on receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Transfer of
negotiable
instruments
and shares

36. (1) Where the execution of a document, or the endorsement of the party in whose name a negotiable instrument or a share in a Corporation is standing, is required to transfer such negotiable instrument or share, the Collector, or such officer as he may appoint in this behalf, may execute such document or make such endorsement as may be necessary; and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:—

A B, by C D, Collector of the district of _____, in a proceeding under the Bihar and Orissa Public Demands Recovery Act, 1914, against A B.

(3) Until the transfer of such negotiable instrument or share, the Certificate-officer may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the

THE BIHAR AND ORISSA PUBLIC DEMANDS [B. & O. Act
(Schedule II)]

(2) The purchaser at a sale under this rule may, in manner provided by section 167 of the Bengal Tenancy Act, 1885¹, or section 22² of the Orissa Tenancy Act, 1913³, and not otherwise, annul any incumbrance on the holding.

Rules 38 to
40 not to
apply in
certain
cases to
certificate-
holders who
are co-sharer
landholders.

41. Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of rules 38, 39 and 40 shall not apply.

Postpone-
ment of sale
to enable
certificate-
debtor to
raise amount
due under
certificate.

42. (1) When an order for the sale of immovable property has been made, if the certificate-debtor can satisfy the Certificate-officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the certificate-debtor, the Certificate-officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case the Certificate-officer shall grant a certificate to the certificate-debtor, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in section 8 or section 20, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the certificate-debtor, but to the certificate-officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Certificate-officer.

43. (1) When a tenure or holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885¹, or Chapter XVI of the Orissa Tenancy Act, 1913³, is in force, is put up for sale in execution of a certificate for arrears of rent due in respect thereof, the Certificate-debtor shall not bid for or purchase the tenure or holding.

(2) If a certificate-debtor purchases, by himself or through another person a tenure or holding so sold, the Certificate-officer may, if he thinks fit, on the application of the certificate-holder or any other person interested in the sale, by order, set aside the sale; and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the certificate-debtor.

1. Printed in Bengal Code, 1939, Vol. I, p. 651.
2. Printed ante, p. 7.

RECOVERY ACT, 1914
(Schedule II)

44. On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent, on the amount of his purchase-money, to the officer or other person conducting the sale; and, in default of such deposit, the property shall forthwith be re-sold.

45. The full amount of purchase-money payable shall be paid by the purchaser to the Certificate-officer on or before the fifteenth day from the sale of the property.

46. In default of payment within the period mentioned in rule 45 the deposit may, if the Certificate-officer thinks fit, after defraying the expenses of the sale be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

47. Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

48. Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

49. Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty (if any) referred to in clause (b) of section 28, and such interest as the Certificate-officer may allow, shall be paid to the purchaser.

50. (1) Where a sale of immovable property has become absolute, the Certificate-officer shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall bear date of the day on which the sale became absolute.

51. Where the immovable property sold is in the occupancy of the certificate-debtor, or of some person on his behalf, or of some person claiming under a title created by the certificate-debtor subsequently to the service of the notice issued under section 7, and a certificate in respect thereof has been granted under rule 50, the Certificate-officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Deposit by purchaser and re-sale in default.

Time for payment of purchase-money in full.

Procedure in default of payment.

Notification on re-sale.

Bid of co-sharer to have preference.

Return of purchase-money in certain cases.

Certificate to purchaser.

Delivery of property in occupancy of certificate-debtor.

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(Schedule II)]

Delivery of
property
in occupancy
of tenant
or other
person

52. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under rule 50, the Certificate-officer shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the certificate-debtor has been transferred to the purchaser.

Discretionary power to
permit certi-
ficate-debtor
to show
cause against
detention in
prison.

53. (1) The Certificate-officer may, before issuing a warrant for the arrest of the certificate-debtor, issue a notice calling upon him to appear before the Certificate-officer, on a day to be specified in the notice, and show cause why he should not be committed to the civil prison.

(2) Where appearance is not made in obedience to the notice, the Certificate-officer may issue a warrant for the arrest of the certificate-debtor.

54. (1) When a certificate has been signed either in accordance with the provisions of section 4, or on a requisition made under section 5, no certificate-debtor shall be arrested in execution of the certificate unless and until the certificate-holder pays into Court such sum as the Certificate-officer thinks sufficient for the subsistence of the certificate-debtor from the time of his arrest until he can be brought before the Certificate-officer.

(2) When a certificate-debtor is committed to the civil prison in execution of a certificate, the Certificate-officer shall fix for his subsistence such monthly allowance as he may be entitled to according to the scale fixed by the [Provincial Government]¹ for the subsistence of arrested judgment-debtors, or, where no such scale has been fixed, as the Certificate-officer considers sufficient with reference to the class to which the certificate-debtor belongs.

(3) The monthly allowance fixed by the Certificate-officer shall be supplied, by the person upon whose requisition the certificate was signed, by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the Certificate-officer for such portion of the current month as remains unexpired before the certificate-debtor is committed to the civil prison; and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the certificate-holder for the subsistence of the certificate-debtor in the civil prison shall be deemed to be costs in the proceeding:

¹. Substituted by the A. O. for "L. G."

(Schedule II)

Provided that the certificate-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

SUPPLEMENTAL

55. (1) Every Certificate-officer shall cause to be kept in his office a register of certificates filed in his office under this Act, and shall cause particulars of all such certificates to be entered in such register. Register of certificates.

(2) Such register shall be open during office hours, for not less than two hours daily, and at such time as may be fixed by the Collector, for inspection by any person who desires to inspect the same; and a fee of one anna shall be chargeable for every such inspection.

56. (1) Payment of the amount due under any certificate may be made by instalments, if the Certificate-officer in whose office the certificate is filed so directs. Payment by instalments.

(2) The payment of every such instalment shall be entered in the register referred to in rule 55.

57. When a copy of a certificate has been sent to another officer under section 13, sub-section (1), under such officer in

Rentance to Certificate-officer of sums received under a certificate transferred for execution.

58. When the whole or any portion of the amount due under a certificate has been realized, the Certificate-officer in whose office the original certificate is filed shall cause an entry of the fact to be made upon the certificate and in the register referred to in rule 55.

59. When a copy of a certificate has been sent to another officer under section 13, sub-section (1),

or when a certificate has been signed upon a requisition, any satisfaction of the certificate, whether in whole or in part, shall be certified to such officer, or to the sender of such requisition, as the case may be.

Entry of

tion of satisfaction to other persons.

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60. The forms set forth in the Appendix shall be used, with such variations as circumstances may require.

Forms in Appendix.

61. Where no form is set forth in the Appendix, the appropriate form in use in Civil Courts shall be used, with such modifications as may appear to be necessary.

Other forms

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 (Schedule II)]

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(See rule 60)

FORM No. I

CERTIFICATE OF PUBLIC DEMAND

(See sections 4 and 6)

Filed in the Office of the Certificate-officer of (name of District)

No. of Certificate	Name and address of certificate-holder	Name and address of certificate-debtor	Amount of public demand [including interest, if any, and including the fee paid under section 5, subsection (2), if any] for which this certificate is signed, and period for which such demand is due	Further particulars of the public demand for which this certificate is signed
1	2	3	4	5

I hereby certify that the above-mentioned sum of Rs. _____ is due to the above named from the above-named [If the certificate is signed on requisition sent under section 5, add—]

I further certify that the above-mentioned sum of Rs. _____ is justly recoverable, and that its recovery by suit is not barred by law.

Dated this _____ day of _____ 10_____

A. B.,

Certificate-officer of

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FORM No. 2

REQUISITION FOR A CERTIFICATE

(See section 5)

To the Certificate-officer of the district of

Name of certificate-debtor	Address of certificate-debtor	Amount of public demand for which this requisition is made	Nature of the public demand for which this requisition is made
1	2	3	4

I request you to recover the above-mentioned sum of Rs. , which I am satisfied, after inquiry, is due from the said in respect of

Verified by me on the day of 19 .
A. B.,

(Designation).

FORM No. 3

NOTICE TO CERTIFICATE-DEBTOR

(See section 7)

To {name of Certificate-debtor}

You are hereby informed that a certificate against you for Rs. , due from you on account of , has this day been filed in my office, under section of the Bihar and Orissa Public Demands Recovery Act, 1914. If you deny your liability to pay the said sum of Rs. , you may, within thirty days from the service of this notice, file in my office a petition denying liability, in whole or in part. If, within the said thirty days, you fail to file such a petition, or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed, it will be executed, under the provisions of the said Act, unless you pay Rs. (Rs. on account of the demand and Rs. on account of costs of realization) into my office. Until the said amount

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is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the certificate above-mentioned is hereto annexed.
You may remit the amount by money-order, quoting the number and year of the certificate.

Dated this

day of

, 19
A. D.

Certificate-officer of

FORM No. 4

PETITION DENYING LIABILITY
(See section 9)

To

THE CERTIFICATE-OFFICER OF

SHOWETH— The humble petition of (name of petitioner) of (address),

That a certificate no. of (year), for the sum of Rs. has been filed against your petitioner in your office under section of the Bihar and Orissa Public Demands Recovery Act, 1914.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons :—

That the facts above stated are true to the best of your petitioner's knowledge and belief. Your petitioner therefore respectfully prays that the said certificate may be set aside (or modified or varied).

A. B.,
(Petitioner),

FORM No. 5

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE
(See section 29)

To

Whereas the undermentioned property was sold on the day of , 19 , in execution of certificate no. , dited the certificate-holder [or certificate-debtor] has applied to me to set aside the sale of the said property on the ground that

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any cause to show why the said
you should appear with your proofs
day of , 19 , when the said
application will be heard and determined.

Given under my hand and seal, this day of , 19 .

*Description of property.**Certificate-officer.*

FORM No. 6

WARRANT OF ARREST

(See section 33)

To

	Rs.	a.	p.
Original demand ..			
Interest			
Costs			
Execution			
Total			

WHEREAS a certificate no. was filed, in this office on the , 19 , under section of the Bihar and Orissa Public Demands Recovery Act, 1914, against , certificate-debtor, and the sum of Rs. , as noted in the margin, is due from him in respect of the said certificate ; and whereas the said sum of Rs. has not been paid to the certificate-

holder in satisfaction of the said certificate ; these are to command you to arrest the said certificate-debtor and, unless the said certificate-debtor should pay to you the said sum of Rs. together with Rs. for the cost of executing this process, or should produce a receipt showing payment of the amount to the Certificate-officer, to bring him before the Court with all convenient speed.

You are further commanded to return this warrant on or before the day of , 19 , with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

Dated this day of , 19 .

Certificate-officer.

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FORM No. 7

ORDER COMMITTING CERTIFICATE-DEBTOR TO THE CIVIL PRISON

(See section 38)

To

The Officer in charge of the Civil Prison at

WHEREAS , who has been brought before me this day of , 19 , under a warrant in execution of certificate No. , filed in this office on the , 19 , under section of the Bihar and Orissa Public Demands Recovery Act, 1914, and by which certificate it was ordered that the said should pay

and whereas the said has not paid the said sum nor satisfied me that he is entitled to be discharged from custody ;

You are hereby, in the name of the [Crown]¹, commanded and required to take and receive the said

into the Civil Prison and keep him imprisoned therein for a period not exceeding or until the said shall be : provisions

confinement under this order of committal.

Dated this day of , 19 .

Certificate-officer.

FORM No. 8

NOTICE TO LEGAL REPRESENTATIVE OF CERTIFICATE-DEBTOR

(See section 52)

To (name of legal representative)

You are hereby informed that a certificate against deceased, for Rs. due from him on account of in this office on the , 19 , under section was filed of the Bihar

1. Substituted for "King-Emperor of India". The words "Emperor of India" omitted from the Royal Style and Titles by s. 7 (2) of the Indian Independence Act, 1947. See also s. 10 of the India (Adaptation of Existing Indian Laws) Order, 1947.

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and Orissa Public Demands Recovery Act, 1914, and that a demand of Rs. , in respect of the said certificate proceeding is due from you as the legal representative of the said deceased. If you deny your liability to pay the said sum of Rs. , you may, within thirty days from the service of this notice, file in my office a petition denying liability, in whole or in part. If, within the said thirty days, you fail to file such a petition, or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed it will be executed, under the provisions of the said Act, unless you pay Rs. (Rs.) on account of the demand and Rs. on account of costs of realization) into my office. Until the said amount is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the certificate above-mentioned is hereto annexed.
You may remit the amount by money-order, quoting the number and year of the certificate.

Dated this

day of

, 19

A.B.,

Certificate-officer of

FORM No. 9

NOTICE TO CERTIFICATE-HOLDER

(See section 21)

WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of certificate No. of 19 ; this is to give you notice to appear before me on the day of , 19 , either in person or by a pleader duly instructed to support your claim, as attaching creditor.

GIVEN under my hand and seal, this

day of

, 19

Certificate-officer.

FORM No. 10

WARRANT OF SALE OF PROPERTY

(See rule 24)

To

THE

THESE are to command you to sell by auction, after giving days' previous notice, by affixing the same in this office, and

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making due proclamation, the undermentioned property attached in execution of certificate No. _____ in favour of _____, or so much of the said property as shall realize the sum of Rs. _____, being of the said certificate and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the day of _____, 19_____, with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and seal, this _____ day of _____, 19_____.

Specification of property :—

Certificate-officer.

FORM No. 11
NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION
(See rule 25)

WHEREAS, in execution of certificate No. _____ of a sale is about to be held of your property mentioned below; you are hereby informed that the day of _____, 19_____, has been fixed for settling the terms of the proclamation of sale.

The total amount due from you in respect of the certificate including costs and interest is _____.

GIVEN under my hand and seal, this _____ day of _____, 19_____.
Specification of property :—

Certificate-officer.

FORM No. 12
PROCLAMATION OF SALE
(See rule 25)

NOTICE is hereby given that, under rule 24 in Schedule II to the Bihar and Orissa Public Demands Recovery Act, 1914, an order has been passed by me for the sale of the property mentioned in the claim of the certificate-holder under the certificate mentioned in the margin amounting, with costs and interest up to date of sale, to the sum of _____.

(Schedule II)

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The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the certificate-debtor above-named as mentioned in the schedule below.

In the absence of any order of postponement, the sale will be held by at the monthly sale commencing at o'clock on the at

In the event, however, of the debt above specified, and of the costs of the sale, being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorized agent. The following are the further

Conditions of Sale

The particulars specified in the schedule below have been stated to the best of the information of the Certificate-officer; but the Certificate-officer will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it, subject always to the provisions of rule 28 in Schedule II to the Bihar and Orissa Public Demands Recovery Act, 1914.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immovable property, the person to be the purchaser shall pay immediately after such deposit of 25 per cent. on the amount of his purchase, the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

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7. The full amount of the purchase-money shall be paid by the purchaser before the office of the Certificate-officer closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.
8. In default of payment of the balance of purchase-money within the period allowed the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Certificate-officer thinks fit, be forfeited to the Government, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and seal, this

day of , 19 .
Certificate-officer.

Schedule of Property

Number of lot	Description of property to be sold, with the name of each owner where there are more certificate-debtors than one	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to the Government	Claims (if any) which have been put forward to the property and any other known particulars bearing on its nature and value
1	2	3	4

FORM No. 13

ORDER ON THE NAZIR FOR CAUSING PUBLICATION OF PROCLAMATION
OF SALE

(See rule 26)

To

The Nazir of
WHEREAS an order has been made for the sale of the property of
the certificate-debtor under certificate No. , dated the , 19 .

(Schedule II)

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which is specified in the schedule hereunder annexed ; and whereas the day of , 19 , has been fixed for the sale of the said property ; copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on my office, and then to submit to me a report showing the dates on which and the manner in which the proclamations have been published.

Dated the day of , 19 .
Schedule

Certificate-officer.

FORM No. 14

CERTIFICATE, BY OFFICER HOLDING A SALE, OF THE DEFICIENCY OF PRICE ON A RE-SALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT.

(See rule 29)

CERTIFIED that the re-sale of the property in execution of certificate No. dated the , 19 , in consequence of default on the part of purchaser, there was a deficiency in the price of the said property, amounting to Rs. , and that the expenses attending such re-sale amounted to Rs. , making a total of Rs. , which sum is recoverable from the defaulter.

Dated the day of , 19 .

Officer holding the sale.

FORM No. 15

CERTIFICATE OF SALE OF LAND

(See rule 41)

This is to certify that has been declared the purchaser at a sale by public auction on the day of , 19 , of in execution of certificate No. , dated the , 19 , and that the said sale has been duly confirmed by me.

GIVEN under my hand and seal, this day of , 19

Certificate-officer.

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FORM No. 16

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A
SALE IN EXECUTION

(See rule 51)

To

THE
WHEREAS

of the
has become the certified purchaser
at a sale in execution of certificate No. dated
the certified purchaser, as aforesaid, into possession of the same,
GIVEN under my hand and seal, this day of , 19 .
Certificate-officer.

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE

FORM No. 17

(See rule 53)

To

WHEREAS

execution of certificate No. has made application to me for
your person ; you are hereby required to appear before me on the
day of , 19 , to show cause why you should not be
committed to the Civil Prison in execution of the said certificate.
GIVEN under my hand and seal, this day of , 19 .
Certificate-officer.

SCHEDULE III

(Section 69)

Part I.—Amendments of the Bengal Tenancy Act, 1885
Part II.—Amendments of the Orissa Tenancy Act, 1913
Part III.—Amendments of the Chota Nagpur Tenancy Act, 1908

PART I

PART II

ORISSA TENANCY ACT, 1913

the Orissa Tenancy Act, 1913², the B.¹
U.²

AMENDMENTS OF THE ORISSA TENANCY ACT, 1913

I. For Chapter XV of the Orissa Tenancy Act, 1913², the B.¹
U.²

3. shall be substituted, namely:-

1. The Bengal Tenancy Act, 1885 (VIII of 1885) is not in force in
the Province of Orissa. Amendments to that Act have, therefore, been omitted.
2. Printed ante, p. 7.
2. Printed ante, p. 107.

(Schedule III)

II. For sub-section (1) of section 212 of the Orissa Tenancy Act, 1913,¹ the following shall be substituted, namely :—

* * * * *

III. (1) In sub-section (1) of section 221 of the Orissa Tenancy Act, 1913¹, after the words "the foregoing sections" the words "or under the Bihar and Orissa Public Demands Recovery Act, 1914", shall be inserted.

(2) In sub-section (4) of the said section—

- (a) after the words "a decree" the words "or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914," shall be inserted, and
- (b) after the words "this Chapter" the words "or that Act" shall be inserted.

IV. In sub-section (1) of section 225 of the Orissa Tenancy Act, 1913,¹ after the words "under this Chapter" this following shall be inserted, namely :—

"or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914."

V. In section 226 of the Orissa Tenancy Act, 1913,¹ for the words "when a tenure or holding is advertised for sale under this Chapter in execution of a decree against a superior tenant defaulting" the following shall be substituted, namely :—

"When a tenure or holding is advertised for sale—

- (a) under this Chapter, in execution of a decree against a superior tenant defaulting, or
- (b) in execution of a certificate, signed under the Bihar and Orissa Public Demands Recovery Act, 1914, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting."

PART III

1. Printed ante, p. 7.

2. Printed ante, p. 109.

3. The Chota Nagpur Tenancy Act, 1903 (Bengal Act VI of 1903), is not in force in Orissa. Amendments to that Act have, therefore, been omitted.

BIHAR AND ORISSA ACT II OF 1915
(THE BIHAR AND ORISSA EXCISE ACT, 1915)

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2. Definitions
3. Provision supplemental to the definition of "intoxicating drug".
4. Power to declare what shall be deemed to be "country liquor" and "foreign liquor", respectively.
5. Definition of retail and wholesale
6. Saving of certain Acts

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8. Control, appeal and revision

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18. Possession of excisable articles not obtained from a licensed vendor.
19. Possession of excisable articles generally
20. License required for sale
21. Manufacture and sale of liquor in or near cantonments
22. Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs.

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49. Penalty for altering or attempting to alter any denatured spirit
50. Presumption as to offence under section 49 in certain cases
51. Presumption as to any spirit being, or containing, or having been derived from, denatured spirit.
52. Penalty for adulteration by licensed manufacturer or vendor or his servant.
53. Penalty for fraud by licensed manufacturer or vendor or his servant.
54. Penalty for certain unlawful acts, of licensed vendors or their servants.
55. Penalty for possession of excisable article in respect of which an offence has been committed.
56. Penalty for consumption in chemist's shop, etc.
57. Penalty for certain acts by licensee or his servant
58. Import, export, transport, manufacture, sale or possession by one person on account of another.
59. Criminal liability of licensee for acts of servant
60. Imprisonment under section 58 or section 59
61. Penalty on Excise Officer making vexatious search, seizure, detention, or arrest, or refusing duty or being guilty of cowardice.
62. Penalty for offences not otherwise punishable
63. Penalty for contempt of Court
64. Penalty for attempt to commit offence
65. Enhanced punishment after previous conviction
66. ~~Penalty for acts of licensee~~
- 67.
68. case property liable to
confiscation.

CHAPTER IX

DETECTION, INVESTIGATION AND TRIAL OF OFFENCES, AND PROCEDURE

69. Power to enter and inspect, and power to test and seize measures, etc.
70. Power to arrest without warrant, to seize articles liable to confiscation, and to make searches.
71. Power of Collector to issue warrant of arrest
72. Power to issue search-warrant
73. Power of Collector or Magistrate to arrest or search without issue of warrant.
74. Power to search without a warrant
75. Information and aid to Excise Officers
76. other persons to
77. es
78. Powers and duties of Excise Officers investigating offences
79. Security and bail
80. Production of articles seized and persons arrested
81. Custody by police of articles seized
82. Reports of arrests, seizures and searches
83. Execution of Collector's warrant

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- 84. Maximum period of detention
- 85. Application of certain provisions of the Code of Criminal Procedure, 1898.
- 86. Magistrates having jurisdiction to try offences
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CHAPTER X**MISCELLANEOUS**

- 89. Power of Provincial Government to make rules
- 90. Power of Board to make rules
- 91. Powers of Board exercisable from time to time
- 92. Publication and effect of rules and notifications
- 93. Recovery of dues
- 94. Power of Provincial Government to exempt excisable articles from provisions of Act.
- 95. Bar of certain suits
- 96. Limitation of suits and prosecutions
- 97. Bar to application of section 261 of the Bengal Municipal Act, 1884.
- 98. Bengal Act V of 1909 to cease to be in force, but orders, rules, etc., made and licenses, etc., granted thereunder to continue.

SECTION

BIHAR AND ORISSA ACT II OF 1915

(THE BIHAR AND ORISSA EXCISE ACT, 1915)¹

(19th January, 1916)

An Act to amend and re-enact the Excise Law in the Province of Bihar and Orissa

Whereas it is expedient to amend and re-enact the law in the Province of Bihar and Orissa relating to the import, export, transport, manufacture, possession, and sale of certain kinds of liquor and intoxicating drugs ;

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

It is hereby enacted as follows.—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Bihar and Orissa Excise Act, 1915 ;

(2) It extends² to the whole of the Province of Bihar and Orissa including the Santal Parganas and the district of Angul³, and

(3) It shall come into force on such date as the [Provincial Government]⁴ may, by notification, direct.

2. In this Act, unless there is anything repugnant in the subject or context;—

(1) "beer" includes ale, stout, porter and all other fermented liquor made from malt ;

(2) "Board" means the Board of Revenue * * *

(3) to "bottle" means to transfer liquor from a cask or other vessel to a bottle or other receptacle for the purpose of sale, whether any process of rectification be employed or not, and includes re-bottling ;

1. LEGISLATIVE PAPERS—For Statement of Objects and Reasons, see Bihar and Orissa Gazette, 1915, Pt. V, p. 39 ; for Report of Select Committee, see ibid., 1915, Pt. V, p. 84 ; and for Proceedings in Council, see ibid., 1915, Pt. VI pp. 342-343 and 373-381.

2. Local Govt. since of
Bihar. Khond-
mals. 1936
to—
... see s. 31, Sch. IV, ibid.

(ii) the ex-Madras area, see s. 3A, ibid.

3. The district of Angul then included the present district of the Khond-mals.

4. Substituted by the A. O. for "L. G."

5. The words "for Bihar and Orissa", omitted by the A. O.

THE BIHAR AND ORISSA EXCISE ACT, 1915. (B. & O. Act)

(4)

(Sec. 2)

(5) (a) "denaturant" means any substance prescribed by rule made in this behalf under clause (3) of section 90, for admixture with spirit in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever;

(b) to "denature" means to mix spirit with one or more denaturants in such manner as may be prescribed by rule made in this behalf under clause (3) of section 90, and "denatured spirit" means spirit so mixed;

²(6) "excisable article" means—

(a) any alcoholic liquor for human consumption ; or
 (b) any intoxicating drug ; or

(c) any medicinal or toilet preparation containing alcohol.]

³(6a) "excise duty" and "countervailing duty" mean any such excise duty or countervailing duty, as the case may be, as is mentioned in item 40 of List II in the Seventh Schedule to the Government of Indian Act, 1935.]

(7) "Excise Commissioner" means the officer appointed under section 7, clause (a) ;

(8) "Excise Officer" means the Collector or any officer or other person appointed or invested with powers under section 7;

(9) "Excise-revenue" means revenue derived or derivable from any duty, fee, tax, payment (other than a fine imposed by a Criminal Court) or confiscation imposed or ordered under this Act or any other law for the time being in force relating to liquor or intoxicating drugs ;

"(10) "export" means to take out of the Province otherwise than across a customs frontier as defined by the Central Government].

⁵(II)

- 1. Omitted by the Dangerous Drugs Act, 1930 (II of 1930), s. 40 and Sch. II.
- 2. Substituted by the A. O. for the "Original clause (6) which read as follows:—
- "excisable article" means any liquor or intoxicating drug as defined by or under this Act."
- 3. Inserted by the A. O.
- 4. Substituted by *ibid* for the Original clause (10) which read as follows:—

"export" means to take out of the Province of Bihar and Orissa ; Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (13), it means to export inter-provincially, as defined in clause (1) of section 2 of the Dangerous Drugs Act, 1930.]

5. Omitted by the Dangerous Drugs Act, 1930 (II of 1930), s. 40, and Sch. II.

(Sec. 2)

¹[(12) "import" (except in the phrase "import into [all the Provinces of India]"² means to bring into the Province otherwise than across a customs frontier as defined by the Central Government;]

³[(12a) "intoxicant" means any liquor or intoxicating drug];

⁴[(13) "intoxicating drug" means—

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa L.*), including all forms known as *khang*, *siddhi* or *ganja*;

(ii) *charas*, that is, the resin obtained from the hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;

(iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and

(iv) any other intoxicating or narcotic substance which the [Provincial Government]⁵ may, by notification⁶, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930];

(14) "Liquor" includes all liquids consisting of or containing alcohol, such as spirits of wine, spirit, wine, fermented *tari*, *pachwai* and beer, and also unfermented *tari*, and also any other substance which the [Provincial Government]⁵ may, by notification, declare to be liquor for the purposes of this Act;

(15) "manufacture," includes—

(i) every process, whether natural or artificial, by which any [intoxicant]⁷ is produced or prepared (including the tapping of *tari*-producing trees and the drawing of *tari* from trees),

(ii) redistillation, and

(iii) every process for the rectification, flavouring, blending, or colouring of liquor, or for the reduction of liquor for sale;

1. Substituted by the A. O. for the Original clause (12) which read as follows :—

1930 ;".

2. Substituted by the I. O. for "British India".

3. Inserted by the A. O.

4. Substituted by the Dangerous Drugs Act, 1930 (II of 1930), s. 40 and Sch. II, for the original clause (13).

5. Substituted by the A. O. for "L. G."

6. For notification declaring what is an intoxicating drug, see Orissa L. S. R. & O., Vol. I, Pt. VII.

7. Substituted by the A. O. for "excitable article".

(Sects. 3-5)

(16) "pachani" means fermented rice, millet or other grain, whether mixed with any liquid or not, and any liquid obtained therefrom, whether diluted or undiluted ; but does not include beer;

(17) "place" includes building, house, shop, booth, vessel, raft, vehicle or tent;

(18) expressions referring to "sale" include any transfer otherwise than by way of gift;

(19) "spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not;

(20) "tari" means fermented or unfermented juice drawn from any cocoanut, palmyra, date or other kind of palm tree; and

(21) "transport" means to remove from one place to another within the Province of Bihar and Orissa.

13.

4. The [Provincial Government] may, by notification¹, declare what shall be deemed to be "country liquor" and "foreign liquor," respectively.

5. (1) The Board² may, by notification³, declare, with respect either to the whole of the Province of [Bihar and] Orissa or to any specified local area, and as regards purchasers generally or any specified class of purchasers, and either generally or for any specified occasion, what quantity of any [intoxicant]⁴ shall, for the purposes of this Act, be the limit of a retail sale.

(2) The sale of any [intoxicant]⁵, in any quantity in excess of the quantity declared in respect thereof under sub-section (1) shall be deemed to be a wholesale sale.

1. Provision supplemental to the definition of "intoxicating drug" Rep by s. 40 and Sch II of the Dangerous Drugs Act, 1930 (II of 1930).

2. Substituted by the A. O. for "L. G."

3. The words "with the previous sanction of the Government of India" rep by the Devolution Act, 1920 (XXXVIII of 1920) s. 2 and Sch. I, Pt. VIII.

4. For notification declaring what shall be deemed to be "country liquor" and "foreign liquor", respectively see Orissa L. S. R. & O., Vol. I, Pt. VII.

5. The Proviso which was in, by the Devolution Act, 1920 (XXXVIII of 1920), s. 2 and Sch. I, Pt. VIII, has been omitted by the A. O.

6. For the functions of the Board, see Orissa L. S. R. & O., Vol. I, Pt. VII, and the Orissa Excise Manual, 1937, Vol. I, p. 90.

7. Substituted by the A. O. for "excisable article".

(Secs. 6-7)

6. Nothing contained in this Act shall affect the provisions of—
 Saving of
 certain
 Acts.
 (a) the Sea Customs Act, 1878¹, or
 (b) the Indian Tariff Act, 1894² (except section 6 there-
 of), or
 (c) the Cantonments Act, 1910³.

CHAPTER II

ESTABLISHMENTS, CONTROL, APPEAL, AND REVISION

7. (1) The administration of the Excise Department and the collection of the excise-revenue within a district shall ordinarily be under the charge of the Collector.

(2) to the wr
local area,

(a)

- (b) appoint any person to exercise all or any of the powers and to perform all or any of the duties, consistent and imposed on a Collector by or under this Act subject to such control as the [Executive Government]⁴ may direct;
- (c) appoint officers of the Excise Department of such classes and with such designations as may be required in the [Executive Government]
- (d) order that all or any of the powers and duties mentioned above or under this Act to be exercised and performed under clause (c) of this section shall be exercised and performed by any [servant of the Government or any other person]
- (e)

Establish-
ments, and
delegations,
and with-
drawal of
powers.

under this Act ; and
(g) permit the delegation by the Board, the Commissioner of a Division, the Excise Commissioner or the Collector, to any persons, or classes of persons specified in such notification, of any powers conferred or duties imposed upon it or him by or under this Act.

Control
appeal and
revision

8. (1) The Collector shall, in all proceedings under this Act, be subject to the control of the Excise Commissioner, and shall, in such matters as the [Provincial Government]¹ may direct, be subject also to the control of the Commissioner of the Division.

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rule made under section 89, clause (c).

(3) The Board may revise any order passed by a Collector, the Excise Commissioner, or the Commissioner of a Division.

CHAPTER III IMPORT, EXPORT AND TRANSPORT

9. (1) No [intoxicant]² shall be imported unless—
(a) the [Provincial Government]¹ has given permission, either general or special, for its import ;
(b) such conditions (if any) as the [Provincial Government]¹ may impose have been satisfied ; and
(c) the duty (if any) payable under Chapter V³ has been paid or a bond has been executed for the payment thereof.

(2) Sub-section (1) shall not apply to any article which has been imported into [all the Provinces of India]⁴ and was liable, on such importation, to duty under the Indian Tariff Act, 1894⁵, or the Sea Customs Act, 1878,⁶ if—
(i) the duty as aforesaid has been paid, or
(ii) a bond has been executed for the payment of such duty.

(3) Clauses (a) and (b) of sub-section (1) shall not apply to liquor manufactured in all the Provinces of India⁴ and declared under section 4 to be foreign liquor.

1. Substituted by the A. O. for "L. C."

2. Substituted by *ibid* for "excisable article".

3. Substituted by *ibid* for "imposed under section 27".

4. Substituted by the I. O. for "British India".

5. See foot-note 2 on p. 220, ante.

6. See foot-note 1, *ibid*.

(Secs. 10-13)

10. No [intoxicant]¹ shall be exported or transported unless—
 (a) the duty (if any) [payable under Chapter V]² or

Restriction
on export
or transport.

* * * * *

has been paid, or a bond has been executed for the payment thereof :

Provided that the Board may, subject to such conditions (if any) as it thinks fit to impose, exempt any [intoxicant]¹ from the provisions of this section.

11. The [Provincial Government]³ may, by notification⁴,—

(a) * * * * * prohibit the import or export of any [intoxicant]¹ into or from the Province of [Bihar and] Orissa or any part thereof, or

(b) prohibit the transport of any [intoxicant]¹

* * * * *

Power to
prohibit im-
port, export
or transport.

12. (1) No [intoxicant]² exceeding such quantity as the [Provincial Government]³ may prescribe by notification, either generally or for any specified local area, shall be imported, exported or transported, except under a pass :

Passes for
import, ex-
port or
transport.

Provided that, in the case of duty-paid foreign liquor other than denatured spirit, such passes shall be dispensed with unless the [Provincial Government]¹ by notification⁵, otherwise directs with respect to any local area.

(2) The passes required by sub-section (1) may be granted by the Collector.

(3) Such passes may be either general for definite periods and particular kinds of [intoxicants]⁶ or special for specified occasions and particular consignments only.

CHAPTER IV

MANUFACTURE, POSSESSION AND SALE

13. (a) No [intoxicant]¹ shall be manufactured,

(b) no hemp plant * * * * shall be cultivated,

License
required for
manufac-
ture.

1. Substituted by the A. O. for "excisable article".

2. Substituted by *ibid* for "imposed under section 27".

3. Clause (b) omitted by *ibid*.

4. Substituted by *ibid* for "L. G."

5. For notifications under ss. 11 and 12 see *Orissa L. S. R. & O.*, Vol. I Pt. VII.

6. The words "with the previous sanction of the Government of India" omitted by the Devolution Act, 1920 (XXXVIII of 1920), s. 2 and Sch. I, Pt. VIII.

7. The proviso which was ins by *ibid* has been omitted by the A. O.]

8. Substituted by the A. O. for "excisable articles".

9. The words "or any cocaine-yielding plant of the genus *Erythroxylon*" rep. by the Dangerous Drugs Act, 1930 (II of 1930), s. 40 and Sch. II.

THE BIHAR AND ORISSA EXCISE ACT, 1915 [B. & O. Act
 (Sec. 14)

- (c) no portion of the hemp plant * * *¹ from which an intoxicating drug can be manufactured or produced shall be collected,
 - (d) no liquor shall be bottled for sale,
 - (e) no distillery or brewery shall be worked, and
 - (f) no person shall use, keep or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any [intoxicant]² other than *tari*,
- except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector:

Provided that any *tari*-producing tree may be tapped, and *tari* may be drawn from any tree, without a license under this section, by the person in possession of the tree,—

- (i) for the purpose of being used in the manufacture of *gur* or molasses, or
- (ii) for the purpose of being used solely for the preparation of food for domestic consumption and not—
 - (a) as an intoxicant, or
 - (b) for the preparation of any intoxicating article, or
 - (c) for the preparation of any article for sale, or
- (iii) up to a limit of four seers, for the domestic consumption of the said person.

Drawing of
tari in noti-
 fied areas

14. (1) Notwithstanding anything contained in the proviso to section 13,—

- (a) no *tari*-producing tree shall be tapped, and
- (b) no *tari* shall be drawn from any tree, in any local area specified in this behalf by the [Provincial Government]³ by notification⁴, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector:

(2) Provided that, when any exclusive privilege of manufacturing *tari* has been granted under section 22, the [Provincial Government]³ may declare that the written permission given by the grantee to draw *tari* shall have the same force and effect as a license granted by the Collector under sub-section (1) of this section.

(3) Provided also that in any local area specified by notification under sub-section (1) the [Provincial Government]³ may, by notification, declare that that sub-section shall not apply to trees tapped or *tari* drawn under such special conditions as the Board may prescribe.

1. See foot-note 9 on p. 231 ante.

2. Substituted by the A. O. for "excisable article".

3. Substituted by Bill for "L. G."

4. For notification see Orissa L. S. R. & O., Vol. I, Pt. VII.

(Secs. 15-18)

15. (1) The Excise Commissioner may —

- (a) subject to any restrictions imposed by the [Provincial Government]¹, establish, or authorize the establishment of, distilleries or breweries, in which liquor may be manufactured under a license granted under section 13;
- (b) discontinue any such distillery or brewery;
- (c) establish, or authorize the establishment of, warehouses, wherein any [intoxicant]² may be deposited and kept without payment of duty; and
- (d) discontinue any such warehouse.

Establishment of distilleries, breweries, or warehouses.

(2) No distillery, brewery or warehouse as aforesaid shall be established except by, or under the authority of, the Excise Commissioner.

16. No person shall, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector, deposit or keep any [intoxicant]² in any warehouse or other place of storage established, authorized or continued under this Act.

License required for depositing or keeping intoxicant in warehouse or other place of storage.

17. No [intoxicant]² shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, unless the duty (if any) [payable under Chapter V]³ has been paid or a bond has been executed for the payment thereof.

Payment of duty on removal from distillery, brewery, warehouse or other place of storage.

18. (1) No person shall have in his possession any [intoxicant]² which has not been obtained from a licensed vendor of the same.

(2) Sub section (1) shall not apply to—

- (a) any [intoxicant]² lawfully deposited or kept in a distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, or
- (b) any [intoxicant]² lawfully in the possession of a licensed vendor of the same, or
- (c) any [intoxicant]² in the possession of a person who has lawfully imported it, or who is authorized by the Collector to possess it, or
- (d) any foreign liquor in the possession of any common carrier or warehouseman as such, or purchased at a sale authorized by clause (a) of proviso (4) to section 20, or

Possession of intoxicant not obtained from a licensed vendor.

1. Substituted by the A. O. for "L. G."

2. Substituted by ibid for "excisable article".

3. Substituted by ibid for "imposed under section 27".

- (e) *tari* intended to be used in the manufacture of *gur* or *molas*, or
- (f) *tari* intended to be used solely for the preparation of food for domestic consumption, and not—
 - (i) as an intoxicant, or
 - (ii) for the preparation of any intoxicating article, or
 - (iii) for the preparation of any article for sale, or
- (g) *tari* intended to be used in the manufacture of bread by a person holding a permit to use *tari* for that purpose, or
- (h) *tari*, up to a limit of four seers, when in the possession of the person possessing the tree from which it was drawn and intended to be used for his domestic consumption, or
- (i) intoxicating drugs in the possession of any person licensed to cultivate or collect the plants from which such drugs were produced, when such possession is in accordance with the conditions of his license.

Possession of intoxicant generally.

19. (1) No person not being licensed to manufacture, cultivate, collect or sell any [intoxicant]¹ shall have in his possession any quantity of any [intoxicant]¹ in excess of such quantity as the Board has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

- (2) Sub-section (1) shall not apply to—
 - (a) any foreign liquor (other than denatured spirit) which is in the possession of any common carrier or warehouseman as such, or
 - (b) any foreign liquor which has been purchased by any person for his bona fide private consumption and not for sale or for use in the manufacture of any article for sale, or
 - (c) *tari* intended to be used in the manufacture of *gur* or molasses,
 - (d) *tari* intended to be used solely for the preparation of food for domestic consumption and not—
 - (i) as an intoxicant, or
 - (ii) for the preparation of any intoxicating article, or
 - (iii) for the preparation of any article for sale.

(3) A licensed vendor shall not have in his possession at any place other than that authorized by his license any quantity of any [intoxicant]¹ in excess of such quantity as the Board has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

1. Substituted by the A. O. for "excisable article".

(Sec. 20)

¹[(4) Notwithstanding anything contained in the foregoing subsections, the Provincial Government may, by notification, prohibit the possession by any person or class of persons or, subject to such exceptions, if any, as may be specified in the notification, by all persons either in the Province of Orissa or in any specified local area, of any intoxicant either absolutely or subject to such conditions as it may prescribe.]

20. No [intoxicant ^P, and no portion of the hemp plant from which an intoxicating drug can be manufactured or produced, shall be sold except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector : .

License required
for sale

Provided as follows : —

- (1) a license for sale in more than one district shall be granted only by the Excise Commissioner or by a Collector specially authorized in that behalf by the Excise Commissioner,
- (2) a license for sale granted under the Excise law in force in any other Province may, on such conditions as may be determined by the Excise Commissioner, be deemed to be a license granted under this Act,
- (3) a cultivator or owner of any hemp plant may sell, without a license, those portions of the plant from which an intoxicating drug can be manufactured or produced, to any person licensed under this Act to deal in the same, or to any officer whom the Excise Commissioner may authorize to purchase or receive the same,
- (4) no license shall be required for any of the following sales, namely :—
 - (a) the sale of foreign liquor lawfully procured by any person for his private use—when such sale is made by such person himself or on his behalf upon his quitting a station, or on behalf of his representatives in interest after his decease;
 - (b) the sale of lari lawfully possessed by a person in possession of the tree from which it was drawn, to a person licensed under this Act to manufacture or sell lari ;

1. Substituted by the Bihar and Orissa Excise (Orissa Amendment) Act, 1947; (Orissa Act XXXV of 1947) for the Original sub-section (1) which read as follows :—

sub sections, the
in by any person
in any specified
subject to such

This Act is in force in all the partially-excluded areas of the Province, see notification No. 5343 R., dated 14.7.1917 in Orissa Gazette, Extraordinary, 1917.

2. Substituted by the A. O. for "excisable article".

THE BIHAR AND ORISSA EXCISE ACT, 1915 [B. & O. Act]

(Sects. 21-23)

- (c) the sale of *tari* lawfully possessed and intended to be used in the manufacture of *gur* or molasses; or
- (d) the sale of *tari* lawfully possessed and intended to be used solely for the preparation of food for domestic consumption, and not—
 - (i) as an intoxicant, or
 - (ii) for the preparation of any intoxicating article, or
 - (iii) for the preparation of any article for sale, or
 - (c) the sale of *tari* lawfully possessed, intended to be used in the manufacture of bread, to a person holding a permit to use *tari* for the purpose of making bread.

*Manufacture
and sale of
liquor in or
near canton-
ments.*

21. Within the limits of any military cantonment, and within such distance from those limits as the [Central Government]¹ may in any case prescribe, no license for the manufacture or sale of liquor shall be granted, except with the previous consent of the Commanding Officer.

*Grant of
exclusive
privilege of
manufacture
and sale of
country
liquor or
intoxicating
drugs.*

22. (1) The [Provincial Government]² may grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege—

- (a) of manufacturing, or supplying wholesale, or
- (b) of manufacturing and supplying wholesale, or
- (c) of selling, wholesale or retail, or
- (d) of manufacturing or supplying wholesale and selling retail, or
- (e) of manufacturing and supplying wholesale and selling retail, any country liquor or intoxicating drug within any specified local area:

Provided that public notice shall be given of the intention to grant any such exclusive privilege, and that any objections made by any person residing within the area affected shall be considered before an exclusive privilege is granted.

(2) No grantee of any privilege under sub-section (1) shall exercise the same unless or until he has received a license in that behalf from the Collector or the Excise Commissioner.

23. (1) A grantee of an exclusive privilege under section 22 shall not let or assign the same or any portion thereof unless he is expressly authorized, by a condition made under that section, to do so.

1. Substituted by the A. O. for "L. G."

2. Substituted by *ibid* for "L. G."

(Sects. 24-25)

de only to a person
igment extends to

(3) The lessee or assignee shall not exercise any rights as such unless and until the Collector has, upon his application, granted him a license to do so.

24. Every person who manufactures or sells any [intoxicant]¹ under a license granted under this Act —

(a) shall supply himself with such measures, weights and instruments as the Excise Commissioner may prescribe², and shall keep the same in good condition; and,

(b) when such measures, weights and instruments have been so prescribed, shall, on the requisition of any Excise Officer duly empowered by the Collector in this behalf, measure, weigh or test any [intoxicant]³ in his possession, at such time and in such manner as such Officer may require.

Maintenance
and use of
measures,
weights and
instruments
by licensed
manufacturers and
vendors.

25. (1) No person who is licensed to sell foreign liquor * * * for consumption on his premises shall, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any [person]⁴ under the age of [eighteen]⁵ years, in any part of such premises in which such liquor * * * is consumed by the public.

* Employment
of children or
women by
licensed
vendors.

[*(1a)*] No person who is licensed to sell country spirit or any intoxicating drug shall employ or without remuneration, any ; in any part of the premises in the hours in which such premises are kept open for business.]

(2) No person who is licensed to sell foreign liquor for consumption on his premises shall, without the previous written permission of the Board,

1. Substituted by the A. O. for "excisable article".

2. See Orissa L. S. R. & O., Vol. I, Pt. VII.

3. The words "or country spirit" rep. by the Bihar and Orissa Excise Amendment) Act, 1928 (B. & O. Act I of 1928), s. 4 (a).

4. Substituted for "child" by *ibid.*

5. Substituted for "fourteen" by *ibid.*

6. The words "or spirit." rep. by *ibid.*

7. Inserted by *ibid.*, s. 4 (b).

THE BIHAR AND ORISSA EXCISE ACT, 1915 [B. & O. Act
(Sects. 26-27)]

business, during the hours in which such premises are kept open for employ or permit to be employed, either with or without remuneration, any woman, in any part of such premises in which such liquor is consumed by the public.

(3) The [Provincial Government]¹ may, by notification, declare that sub-section (2) shall apply also, in any specified area, to persons licensed to sell country spirit for consumption on their premises.

(4) Every permission granted under sub-section (2) shall be endorsed on the license, and may be modified or withdrawn.

26. (1) The District Magistrate or a Subdivisional Magistrate, may, by notice in writing to the licensee, require that any shop in which any [intoxicant]² is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace.

(2) If any riot or unlawful assembly is apprehended or occurs in the vicinity of any shop in which any [intoxicant]² is sold, any Magistrate, or any Police Officer above the rank of constable, who is present, may require such shop to be kept closed for such period as he may think necessary.

(3) When a direction is made by a Magistrate under sub-section (1) or sub-section (2), or by a Police Officer under sub-section (2), such Magistrate or Police Officer shall forthwith inform the Collector of his action and of his reasons therefor.

CHAPTER V

DUTY

27. (1) [An excise duty or a countervailing duty, as the case may be,³ at such rate or rates as the [Provincial Government]¹ may direct,⁴ may be imposed, either generally or for any specified local area, on—

- (a) any excisable article imported, or
- (b) any excisable article exported, or
- (c) any excisable article transported, or

¹ Substituted by the A. O. for "L. G."

² Substituted by *ibid* for "excisable article".

³ Substituted by *ibid* for "A duty".

⁴ For rules made under this section, see *Orissa L. S. R. & O., Vol. I,*

(Sec. 28)

- (d) any excisable article (other than *tari*) manufactured under any license granted in respect of clause (a) of section 13, or
- (e) any hemp plant cultivated, or any portion of such plant collected, under any license granted in respect of clause (b) or clause (c) of section 13, or
- (f) any excisable article manufactured in any distillery or brewery licensed, established, authorized, or continued under this Act.

Explanation.—Duty may be imposed on any article under this sub-section at different rates according to the places to which such article is to be removed for consumption, or according to the varying strengths and quality of such article.

(2) [An excise duty or a countervailing duty as the case may be], at such rate or rates as the [Provincial Government]² may direct, may be imposed, either generally or for any specified local area, on any *tari* drawn under any license granted under section 14, sub-section (1).

- (3) Notwithstanding anything contained in sub-section (1),—
- (i) duty shall not be imposed thereunder on any article which has been imported into all the Provinces of India³ and was liable, on such importation, to duty under the Indian Tariff Act, 1878⁴, or the Sea Customs Act, 1878⁵, if—
 - (ii) the duty as aforesaid has been already paid, or
 - (iii) a bond has been executed for the payment of such duty;

* * * *

28. Subject to any rules made under section 90, clause (12), any duty imposed under section 27 may be levied in any of the following ways:—

Ways of levying duty.

- (a) on an excisable article imported,—
- (i) by payment (upon or before importation) in the Province of [Bihar and] Orissa or in the province or territory from which the article is brought, or
- (ii) by payment upon issue for sale from a warehouse established, authorized or continued under this Act;
- (b) on an excisable article exported,—
- by payment in the Province of [Bihar and] Orissa or

1. Substituted by the A. O. for "A duty".

2. Substituted by *ibid* for "L. G."

3. Substituted by the I. O. for "British India".

4. See foot-note 2 on p. 229, ante.

5. See foot-note 1, *ibid*.

6. Omitted by the A. O.

- in the province or territory to which the article is sent;
- (c) on an excisable article transported,—
 - (i) by payment in the district from which the article is sent, or
 - (ii) by payment upon issue for sale from a warehouse established, authorized or continued under this Act;
 - (iii) on intoxicating drugs manufactured, cultivated or collected,—
 - (i) by a rate charged upon the quantity manufactured under a license granted in respect of the provisions of section 13, clause (a), or issued for sale from a warehouse established, authorized or continued under this Act, or
 - (ii) by a rate assessed on the area covered by, or on the quantity or outturn of, the crop cultivated or collected under a license granted in respect of the provisions of section 13, clause (b) or clause (c);
 - (iv) on spirit or beer manufactured in any distillery or brewery licensed, established, authorized or continued under this Act,—
 - (i) by a rate charged upon the quantity produced in c issued from the distillery or brewery, as the case may be, or issued for sale from a warehouse established, authorized or continued under this Act, or
 - (ii) in accordance with such scale of equivalents, calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the [Provincial Government] may prescribe; and
 - (v) on tari drawn under a licence granted under section 14, sub-section (1),—by a tax on each tree from which the drawing of tari is permitted:

Provided that, where payment is made upon the issue of an excisable article for sale from a warehouse, it shall be at the rate of duty in force on the date of issue of such article from such warehouse:

Provided also that no tax shall be levied in respect of any tree from which tari is drawn only for the manufacture of gur or molasses and under such special conditions as the Board may prescribe.

29. Instead of, or in addition to, any duty leviable under this Act, the [Provincial Government]¹ may accept payment of a sum in payment of grant of exclusive privilege under section 22.

1. Substituted by the A. O. for "L. G."

(Secs. 29A-31)

29A. (1) Until provision to the contrary is made by the Central Legislature, the Provincial Government may continue to levy any duty to which this section applies which it was lawfully levying immediately before the commencement of Part III of the Government of India Act, 1935, under this Chapter as then in force.

Saving for
duties being
levied at
commencement
of Part
III of the
Government
of India Act,
1935

(2) The duties to which this section applies are—

- (a) any duty on intoxicants which are not excisable articles within the meaning of this Act;
- (b) any duty on an excisable article produced outside India and imported into the Province whether across a customs frontier as defined by the Central Government or not.

(3) Nothing in this section shall authorise the levy by the Provincial Government of any duty which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.]

CHAPTER VI

LICENSES, PERMITS AND PASSES

30. Before the expiration of every period for which existing licenses for the retail sale of spirit or *tari* are in force, the Collector shall prepare a list, in a form prescribed by the Board, showing what licenses it is proposed to grant for the retail sale of spirit or *tari* for consumption on the vendors' premises, for the next period of settlement.

Preparation
of list of
places for
which it is
proposed to
grant
licenses for
the retail
sale of
spirit.

31. (1) The Collector shall—

Publication
of such list.

- (a) cause to be conspicuously affixed upon the site of each shop referred to in the said list a notice to the effect that it is proposed to grant a license for the retail sale of spirit or *tari* thereat, or in the vicinity, for the next period of settlement;
- (b) if any site referred to in the said list is not at the time of the expiration of the period for which spirit or *tari* cause a notice, to grant a license for the retail sale of spirit or *tari*, or in the vicinity, for the next period of settlement, to be proclaimed in the locality by beat of drum;

¹. Inserted by the A. Q.

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(Secs. 32-33)

- (c) send a copy of the said list to the Chairman of the District Board;
 - (d) send to the Chairman of each municipality an extract, producing so much of the said list as relates to shops in the municipality; and
 - (e) cause the said list, or any portion thereof, to be published in such other methods (if any) as may be prescribed by rule made under section 89, clause (j).
- (2) When a copy of the said list is sent to the Chairman of the District Board he shall send to each member of the District Board a copy thereof and to the Chairman of each local board an extract reproducing so much of the said list as relates to shops within the jurisdiction of the local board.
- (3) When an extract is sent to the Chairman of any municipality under clause (d) of sub-section (1), he shall—
- (i) cause a copy of the extract to be conspicuously affixed at the central office of the municipality; and
 - (ii) send to each Municipal Commissioner a copy of the extract.

32. The list mentioned in section 30 shall be prepared, and shall be published under section 31, at such time as may be prescribed by rule made in this behalf under section 89, clause (j).

33. (1) Objections to any proposal contained in any list prepared under section 30 may be received, at any time prior to the date prescribed by rule made in this behalf under section 89, clause (j), from—
- (a) persons paying municipal rates and residing in any municipality to which such proposal relates, or (if any such municipality is divided into wards) in the ward to which such proposal relates or in any ward adjoining such ward; or
 - (b) (in the case of shops not situated in any municipality) persons owning or occupying land, or residing, in the vicinity of the shop to which such proposal relates; or
 - (c) the District Board; or
 - (d) the District Magistrate.
- (2) Such objections must be submitted to the Collector, or, in any municipality, either to the Chairman of the municipality or to the Collector.

(3) Every Chairman of a district board or municipality to whom a copy or an extract has been sent under section 31, clause (c) or clause (d), as the case may be, shall send to the Collector, by a date

Time for preparation and publication of such list.

Submission of objections and opinions to Collector.

(Secs. 34-37)

prescribed by rule made in this behalf under section 89, clause (j),—

- (i) in the case of a municipality all objections (if any) to proposals contained in the extract which may be received by the Chairman, from persons paying municipal rates, before that date, and
- (ii) in the case of a district board, all objections (if any) to proposals contained in the list which may be received by the Chairman from members of the district board, or the Chairman of any local board; and
- (iii) any opinion which the Chairman or the member of the district board or the Municipal Commissioners, as the case may be, may wish to record on the said proposals.

34. (1) After the date prescribed for the receipt of objections and opinions submitted under section 33, the Collector shall consider the same, and shall, if necessary, revise the said list, and shall decide for what places licenses for the retail sale of spirit shall be granted, and may, in his discretion, grant licenses accordingly.

(2) The Collector shall then forthwith submit the said list, as so revised, and the said objections and opinions, and his own opinion to the Commissioner of the Division who shall consider the same, and shall forward them, with his own opinion and recommendations (if any), to the Excise Commissioner.

35. The Excise Commissioner shall consider the list, objections and opinions so sent to him, and may modify or annul any order passed or license granted by the Collector; and, notwithstanding anything contained in section 8, his orders shall be final:

Provided that, if there be any difference of opinion between the Excise Commissioner and the Commissioner of a Division, the matter shall be referred by the Excise Commissioner to the Board, whose decision shall be final.

36. The provisions of sections 30 to 35 as to licenses for the retail sale of spirit shall apply also in respect of licenses for the retail sale, in any local area specified in any order made by the Board¹ in this behalf, of any other [intoxicant]² specified in such order.

37. Sections 30 to 36 shall not apply in the case of any license which it is proposed to grant—

- (a) to any person, for the retail sale of any [intoxicant]² during any period not exceeding six months; or

¹ For Board's (Rev. Commissioner's) Orders, see Orissa L. S. R. & O., Vol. I Pt. VII.

² Substituted by the A. O. for "excitable article".

Grant of
licenses by
Collector
and submis-
sion of list,
objections
and opinions
to Excise
Commissi-
oner.

Finality of
decision of
Excise
Commissi-
on or
Board.

Application
of sections
30 to 35 to
licenses for
retail sale
of intox-
icants
other than
spirit.

Exemption
of certain
licenses
from
sections 30
to 36.

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(Sec. 38-II)

- (b) to any person, for the retail sale of any 'denatured' spirit or
- (c) to any person, for the retail sale of any [intoxicant], if substituted for a license which has been cancelled or surrendered before the expiration of the period for which it was granted; or
- (d) to any medical practitioner, chemist, druggist, apothecary or keeper of a dispensary for the retail sale of any [intoxicant] for medicinal purposes.

Fees for,
terms,
conditions,
and form
of, and
duration of,
licences,
permits and
passes.

38. (1) Every license, permit or pass granted under this Act—
- (a) shall be granted—
 - (i) on payment of such fees (if any), and
 - (ii) subject to such restrictions and on such conditions, and
 - (b) shall be in such form and contain such particulars, as the Board² may direct.

(2) Every license, permit or pass under this Act shall be granted for such period (if any) as may be prescribed by rule made by the [Provincial Government]³ under section 89, clause (e).

39. The Board may, if it thinks fit, at any time during the period for which any license has been granted, order a reduction of the amount of fees payable in respect thereof during the unexpired portion of the grant.

40. Any authority granting a license under this Act may require the grantee to execute a counterpart agreement in conformity with the tenor of his license, and to give such security for the performance of such agreement, or to make such deposit in lieu of security, as such authority may think fit.

41. (1) No license granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the license or in any proceedings taken prior to the grant thereof.
- (2) The decision of the Excise Commissioner or (where a reference is made to the Board under section 35) the Board, as to what is a technical defect, irregularity or omission shall be final.

1. Substituted by the A. O. for "excisable article".

2. For Board's (Rev. Commissioner's) Orders, see Orissa L. S. R. & O., Vol. I, Pt. VII.

3. Substituted by the A. O. for "L. G."

Power of
Board to re-
duce fees.

Counterpart
agreement
by licensee,
and security
or deposit.

Technical
defects,
irregulari-
ties and
omissions

(Sec. 42)

42. (1) Subject to such restrictions as the [Provincial Government]¹ may prescribe, the authority who granted any license, permit or pass under this Act may cancel or suspend it—
 (a) if it is transferred or sublet by the holder thereof without the permission of the said authority; or
 (b) if any duty or fee payable by the holder thereof be not duly paid; or
 (c) in the event of any breach by the holder thereof, or by any of his servants, or by anyone acting on his behalf with his express or implied permission, of any of the terms or conditions thereof; or
 (d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable under the Dangerous Drugs Act, 1930, or² under any section of the Merchandise Marks Act, 1893, or under any section which has been introduced into the Indian Penal Code by section 3 of that Act; or
 (e) if the holder thereof is punished for any offence referred to in clause (8) of section 167 of the Sea Customs Act, 1878,³ or
 (f) where a license, permit or pass has been granted on the application of the holder of an exclusive privilege granted under section 22,— on the requisition in writing of such holder; or
 (g) if the conditions of the license, permit or pass provide for such cancellation or suspension at will.
- (2) When a license, permit or pass held by any person is cancelled under clause (a), clause (b), clause (c), clause (d) or clause (e) of sub-section (1), the authority aforesaid may cancel any other license, permit or pass granted to such person [by, or by the authority of, the Provincial Government]⁴ under this Act, or under any other law for the time being in force relating to Excise, or under the Opium Act, 1878.⁵
- (3) The holder of a license, permit or pass shall not be entitled to any compensation for its cancellation or suspension under this section, or to the refund of any fee paid or deposit made in respect thereof.

Power to
cancel, or
suspend
license, per-
mit or pass

1. Substituted by the A. O. for "I. G."

2. Inserted by the Dangerous Drugs Act, 1930 (II of 1930), s. 40, and Sch. II, printed in Central Acts, Vol. VIII, p. 403.

3. Printed in *ibid*, Vol. III, p. 337.

4. Printed in *ibid*, Vol. II, p. 403.

5. Inserted by the A. O.

6. Printed in this Code, Vol. I, p. 421.

(Secs. 43-44)

Power to withdraw
licenses.

43. (1) Whenever the authority who granted any license under this Act considers that the license should be withdrawn for any cause other than those specified in section 42, it shall remit a sum equal to the amount of the fees payable in respect thereof for fifteen days, and may withdraw the license either—

- (a) on the expiration of fifteen days' notice in writing of its intention to do so, or
- (b) forthwith, without notice.

(2) If any license be withdrawn under clause (b) of sub-section (1), the said authority shall, in addition to remitting such sum as aforesaid, pay to the licensee such further sum (if any), by way of compensation, as the Excise Commissioner may direct.

(3) If any license be withdrawn under clause (a) of sub-section (1), the Excise Commissioner may, in special circumstances, direct the payment of such compensation as he may consider fit, in addition to the remission of the fee as aforesaid.

(4) When a license is withdrawn
made, by
er deduct

(5) For the purpose of
vincial Government]
payable on account of
in force shall be taken
total fee for the whole
period during which th
period for which the lic

Surrender
of license.

44. (1) Any holder of a license granted under this Act to sell an

o cancellation or sus

(a) on the expiration of one month's notice in writing given
by him to the Collector of his intention to surrender
it, and

(b) on payment of the fees payable for the license for the
whole period for which it would have been current but
for such surrender:

Provided that, if the Excise Commissioner is satisfied that there
is sufficient reason for the surrender of a license, he may remit to the
holder thereof the sum so payable on surrender, and any fees paid in
advance or any portion of such sum or fees.

1. Substituted by the A. O. for "Government" in the original.
2. Substituted by *ibid* for "excisable article".

(Sects. 45-47)

(2) Sub-section (1) shall not apply in the case of a license for the sale of any country liquor or intoxicating drug in the exercise of an exclusive privilege granted under section 22.

Explanation.—The words “holder of a license,” as used in this section, include a person whose tender or bid for a license has been accepted, although he may not actually have received the license.

45. No person to whom any license has been granted under this Act shall have any claim to the renewal of such license or, save as provided in section 43, any claim to compensation on the determination thereof.

Bar of right
to renewal
and to com-
pensation.

CHAPTER VII

DEPARTMENTAL MANAGEMENT OR TRANSFER

46. (1) If any holder of a license granted under this Act, or any person to whom an exclusive privilege has been granted under section 22, contravenes any provision of this Act or any rule made hereunder, or in any condition imposed upon him by a license, the Collector may (in the case of a license, and, in the case of an exclusive privilege, at any time)—

(a) take the grant under management, at the risk and loss of the person to whom it was made, or

(b) transfer the unexpired portion of the grant, at the risk and loss of the said person, to any other person.

(2) If a license granted to any person under this Act is withdrawn under section 43, or surrendered under section 44, the Collector may, after the withdrawal or surrender thereof, take the grant under management, or transfer the unexpired portion of the grant to any other person.

Power of
Collector
to take
grants under
manage-
ment or to
transfer
them.

CHAPTER VIII

OFFENCES AND PENALTIES

47. If any person, in contravention of this Act, or of any rule, notification or order made, issued or given, or license, permit or pass granted under this Act,

Penalty for
unlawful im-
port, export,
transport,
manufac-
ture, posses-
sion, sale, . . .
etc.

(a) imports, exports, transports, manufactures, possesses or sells any [intoxicant]¹, or

(b) cultivates any hemp plant, * * * * * or,

(c) collects or sells any portion of the hemp plant * * * * * from which an intoxicating drug can be manufactured or produced, or

(d) bottles any liquor for purposes of sale, or

(e) works any distillery or brewery, or

1. Substituted by the A. O. for “excisable article”.

2. See foot-note 9 on p. 231 *ante*.

- (f) uses, keeps or has in his possession any materials, still utensil, implement or apparatus whatsoever for the purpose of manufacturing any [intoxicant]¹ other than tari, or
- (g) establishes any distillery, brewery or warehouse, or
- (h) removes any [intoxicant]¹ from any distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act,

he shall be liable to imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both,

* * * * *

48. In prosecutions under section 47 it may be presumed, unless and until the contrary is proved, that the accused person has committed an offence punishable under that section in respect of—

- (a) any [intoxicant]¹, or
- (b) any still, utensil, implement or apparatus whatsoever for the manufacture of any [intoxicant]¹ other than tari, or
- (c) any materials which have undergone any process towards the manufacture of an [intoxicant]¹, or from which an [intoxicant]¹ has been manufactured,

for the possession of which he fails to account satisfactorily.

49. If any person alters or attempts to alter any denatured spirit, whether manufactured in [all the provinces of India]² or not, with the intention that such spirit may be used for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever, by any method whatsoever,

or has in his possession any spirit in respect of which he knows or has reason to believe that any such alteration or attempt has been made,

he shall be liable to imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both.

50. In prosecutions under section 49, when the accused person is proved to have been in possession of any spirit which is, or contains, or has been derived from, denatured spirit, and in respect of which any such alteration or attempt as is referred to in section 49 has been made, it may, from the mere fact of such possession, be presumed,

1. Substituted by the A. O. for "excisable article".

2. The words "or, if the excisable article in respect of which an offence under clause (a), or clause (f), or clause (h) has been committed is cocaine, to imprisonment for a term which may extend to one year, or to fine which may extend to two thousand rupees, or to both" rep. by the Dangerous Drugs Act, 1920 (II of 1920), s. 40 and Sch. II.

3. Substituted by the I. O. for "British India".

Presumption
as to offence
where
possession
is not satis-
factorily
accounted
for.

Penalty for
altering or
attempting
to alter any
denatured
spirit

Presumption
as to offence
under
section 49
in certain
cases.

(Secs. 51-53)

unless and until the contrary is proved, that such person—

- (i) has himself made such alteration or attempt, or
- (ii) knows or has reason to believe that such alteration or attempt has been made.

51. In any prosecution under this Act it may be presumed, unless and until the contrary is proved, that any spirit which is proved to contain any quantity of any denaturant is, or contains, or has been derived from, denatured spirit.

Presumption as to any spirit being, or containing, or having been derived from, denatured spirit.

52. If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf,—

mixes, or permits to be mixed, with any [intoxicant]¹ manufactured, sold or kept or exposed for sale by him, any noxious drug or any article prohibited by rule made under section 90, clause (9), sub-clause (i), and such mixing does not amount to an offence punishable under section 272 of the Indian Penal Code,

or has in his possession any [intoxicant]¹ in respect of which such admixture has been made,

he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to one thousand rupees, or to both.

53. If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf,—

(a) sells, or keeps or exposes for sale, as foreign liquor, any liquor which he knows or has reason to believe to be country liquor, and such sale does not amount to an offence punishable under section 417 or section 418 of the Indian Penal Code, or

(b) marks any bottle, case, package or other receptacle containing country liquor, or the cork of any such bottle, or

deals with any bottle, case, package or other receptacle containing country liquor,

with the intention of causing it to be sold as foreign liquor,

and so

Penalty for fraud by licensed manufacturer or vendor or his servant.

he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both.

¹ Substituted by the A. O. for "Intoxicating articles".

(Sects. 51-56)

Penalty for
certain un
lawful acts
of licensed
vendors or
their
servants

54. (1) If any licensed vendor, or any person in his employ are acting on his behalf,

- (a) in contravention of section 25, employs or permits to be employed, in any part of his licensed premises referred to in that section, [any person under the age of eighteen years, or any woman]; or
- (b) sells any [intoxicant]² to a person who is drunk or intoxicated ; or
- (c) sells or delivers any spirit or intoxicating drug to any [person]² apparently under the age of eighteen years, whether for consumption by such [person]² or by another person, and whether for consumption on or off the premises of such vendor ; or
- (d) permits drunkenness, intoxication, disorderly conduct or gaming on the premises of such vendor ; or
- (e) permits any persons whom he knows, or has reason to believe, to have been convicted of any non-bailable offence, or who are reputed prostitutes, to meet, or any such person to remain, on the premises of such vendor, whether for the purposes of crime or prostitution or not,

he shall be liable to fine which may extend to five hundred rupees.

(2) When any licensed vendor, or any person in his employ and acting on his behalf, is charged with permitting drunkenness or intoxication on the premises of such vendor, and it is proved that any person was drunk or intoxicated on such premises, it shall lie on the person charged to prove that the vendor and the persons employed by him took all reasonable steps for preventing drunkenness or intoxication on such premises.

Penalty for
possession of
intoxicant in
respect of
which an
offence has
been com-
mitted.

55. If any person, without lawful authority, has in his possession any quantity of any [intoxicant]², knowing, or having reason to believe, the same to have been unlawfully imported, transported or manufactured, or knowing, or having reason to believe, that the prescribed duty has not been paid thereon, he shall be liable to imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both.

Penalty for
consumption
in chemist's
shop, etc.

56. (1) If any chemist, druggist, apothecary, or keeper of a dispensary allows any [intoxicant]² which has not been *bona fide* medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to one thousand rupees, or to both.

1. Substituted for "any child or woman" by the Bihar and Orissa Excise (Amendment) Act, 1923 (B. & O. Act I of 1923), s. 6 (a).

2. Substituted by the A. O. for "excisable article".

3. Substituted for "child" by the Bihar and Orissa Excise (Amendment) Act, 1923 (B. & O. Act I of 1923), s. 6 (b).

4. Substituted for "sixteen" by *ibid.*

(Secs. 57-60)

(2) If any person not employed as aforesaid consumes any such [intoxicant]¹ on such premises, he shall be liable to fine which may extend to two hundred rupees.

57. If any holder of a license, permit or pass granted under this Act, or any person in his employ and acting on his behalf,—

(a) fails to produce such license, permit or pass on the demand of any Officer empowered by the [Provincial Government]², by notification, to make such demand, or

(b) in any case not provided for in section 47, wilfully contravenes any rule made under section 89 or section 90, or

(c) wilfully does any act, in breach of any of the conditions of the license, permit or pass, for which a penalty is not prescribed elsewhere in this Act,

he shall be liable, in case (a), to fine which may extend to two hundred rupees, and in case (b) or case (c) to fine which may extend to five hundred rupees.

Penalty for certain acts by licensee or his servant.

58. (1) When any [intoxicant]³ has been imported, exported, transported, manufactured or sold or is possessed by any person on account of any other person, and such other person knows or has reason to believe that such import, export, transport, manufacture or sale was, or that such possession is, on his account, the article shall, for the purposes of this Act, be deemed to have been imported, exported, transported, manufactured or sold by, or to be in the possession of, such other person.

(2) Nothing in sub-section (1) shall absolve any person who imports, exports, transports, manufactures, sells or has possession of an [intoxicant]⁴ on account of another person from liability to any punishment under this Act for the unlawful import, export, transport, manufacture, sale or possession of such article.

59. When any offence punishable under section 47, section 52, section 53, section 54, section 55 or section 56 is committed by any person in the employ and acting on behalf of the holder of a license, permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offence, unless it can be established that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

60. No person on whose account any [intoxicant]⁵ has been illegally imported, exported, transported, manufactured or held in possession within the meaning of sections 53, and no person of a license, permit or pass who may be punishable under section 56, shall, on conviction, be punished with imprisonment, except in default of payment of fine.

1. Substituted by the A. O. for "excise officer".
2. Substituted by *ibid* for "L. C.".

3. The words "other than" are by the Director of Excise, Vol. VIII.

(Secs. 61-65)

**Penalty on
Excise Officer
making
vexatious
search, sei-
zure, deten-
tion, or
arrest, or
refusing
duty or be-
ing guilty of
cowardice.**

61. If any Excise Officer,—

- (a) without reasonable grounds of suspicion, searches or causes to be searched, any place, under colour of exercising any power conferred by this Act, or
- (b) vexatiously and unnecessarily seizes any property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or
- (c) vexatiously and unnecessarily detains, searches or arrests any person, or
- (d) without lawful excuse, ceases or refuses to perform, or withdraws himself from, the duties of his office, unless expressly allowed to do so in writing by the Collector, or unless he has given to his immediate superior two months' notice in writing of his intention to do so, or
- (e) is guilty of cowardice,

he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both.

**Penalty for
offences not
otherwise
punishable.**

62. If any person is convicted of any act in contravention of any of the provisions of this Act, or of any rule, notification, or order made, issued, or given under this Act, for which a penalty is not prescribed elsewhere in this Act, he shall be liable to fine which may extend to two hundred rupees.

**Penalty for
contempt of
Court.**

63. Every proceeding under this Act before a Collector, or before any officer, of such rank as the [Provincial Government]¹ may, by notification, prescribe, who is exercising powers of a Collector, shall be deemed to be a "judicial proceeding" within the meaning of section 228 of the Indian Penal Code.

**Penalty for
attempt to
commit
offence.**

64. Whoever attempts to commit any offence punishable under this Act shall be liable to the punishment provided for such offence.

**Enhanced
punishment
after
previous
conviction**

65. If any person, after having previously been convicted of an offence punishable under section 47, section 49, section 55, or section 56, or under similar provisions in the Bengal Excise Act, 1909², or in any previous

Act, subsequently commits under any of those sections, which might be imposed on

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried.

¹. Substituted by the A. O. for "L. G."

². Printed in the Bengal Code, Ed. 1931, Vol. III, p. 311.

(Sects. 66-68)

66. (1) Whenever an offence has been committed which is punishable under this Act, the [intoxicant]¹, materials, still, utensil, implement and apparatus in respect of or by means of which such offence has been committed shall be liable to confiscation What things are liable to confiscation

(2) Any [intoxicant]¹ lawfully imported, transported, manufactured, in possession or sold along with, or in addition to, any [intoxicant]¹ which is liable to confiscation under sub-section (1),

and the receptacles, packages and coverings in which any such [intoxicant]¹ as first aforesaid, or any such materials, still, utensil, implement or apparatus as aforesaid, is found,

and the other contents, if any, of such receptacles or packages,

and the animals, carts, vessels, rafts or other conveyances used in carrying the same,

shall likewise be liable to confiscation.

Provided that no animal, cart, vessel, raft or other conveyance as aforesaid shall be liable to confiscation unless the owner thereof is proved to have been implicated in the commission of the offence.

67. (1) When, in any case tried by him, the Magistrate decides that anything is liable to confiscation under section 66, he may either order confiscation or give the owner of such thing an option to pay, in lieu of confiscation, such fine as the Magistrate thinks fit. Confiscation by Magistrate or Collector.

(2) Whenever anything is liable to confiscation under section 66, and the offender or the person entitled to possession is not known or cannot be found, the case shall be inquired into and determined by the Collector, who may order confiscation :

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing intended to be confiscated, or without hearing any person who may claim any right thereto and the evidence (if any) which he produces in support of his claim :

Provided, further, that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that its sale would be for the benefit of its owner, the Collector may at any time direct it to be sold ; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

68. (1) The Collector, or any Excise Officer specially empowered by the [Provincial Government]² in this behalf, not below the rank of Deputy Collector or Superintendent of Excise—

Power to compound offences and to release property lia

(a) may, subject to any restrictions imposed by any rules made under clause (k) of section 89, accept from any

1. Substituted by the A.O. for "excisable article".

2. Substituted by *ibid* for "L. G."

THE BIHAR AND ORISSA EXCISE ACT, 1915 [B. & O. Act
(Sec. 69)

person whose license, permit or pass is liable to be cancelled or suspended under clause (a), clause (b) or clause (c) of section 42, or who is reasonably suspected of having committed an offence punishable under any section of this Act other than section 61, payment of a sum of money, not exceeding two hundred rupees, in lieu of such cancellation or suspension or by way of composition for such offence, as the case may be ; and

(b) in any case in which any property has been seized as being liable to confiscation under section 66, may, at any time before the Magistrate has passed an order under section 67, sub-section (1), release the property on payment of any sum not exceeding the value thereof as estimated by the Collector or such Excise Officer.

(2) When the payments referred to in sub-section (1) have been duly made, the accused person, if in custody, shall be discharged, and the property seized (if any) shall be released ; and no further proceedings shall be taken against such person or property.

CHAPTER IX
DETECTION, INVESTIGATION AND TRIAL OF OFFENCES, AND PROCEDURE

69. Any of the following officers, namely,—

- (a) the Excise Commissioner, or
- (b) a Collector, or
- (c) any Excise Officer not below such rank as the [Provincial Government]¹ may, by notification², prescribe,

may, subject to any restrictions prescribed by the [Provincial Government]¹ by rule made under section 89,—

- (i) enter and inspect, at any time by day or night, any place in which any licensed manufacturer carries on the manufacture of or stores any [intoxicant]³; and
- (ii) enter and inspect, at any time during which the same may be open, any place in which any [intoxicant]³ is kept for sale by any licensed person; and
- (iii) examine the accounts and registers maintained in any such place as aforesaid; and
- (iv) examine, test, measure or weigh any materials, stills,

1. Substituted by the A. O. for "L. G."

2. See Orissa L. S. R. & O., Vol I, Pt. VII.

3. Substituted by the A. O. for "excusable article".

(Secs. 70-73)

utensils, implements, apparatus or [intoxicant]¹ found in any such place as aforesaid ; and

- (v) examine or test and seize any measures, weights or testing instruments, found in any such place as aforesaid, which he has reason to believe to be false.

70. Any of the following persons, namely,—

- (a) any officer of the Excise, Police, Salt, Customs or Land-revenue Department, or
 (b) any person empowered by the [Provincial Government]² in this behalf, by notification,

may, subject to any restrictions prescribed by the [Provincial Government]² by rule made under section 80,—

Power to arrest without warrant, to seize articles liable to confiscation, and to make searches.

- (i) arrest without warrant any person found committing an offence punishable under section 47, section 49, section 55, or section 56 ; and
 (ii) seize and detain any article which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force relating to the excise-revenue ; and
 (iii) detain and search any person upon whom, and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such article to be

71. The Collector or any Magistrate empowered to try offences punishable under this Act, may issue a warrant for the arrest of any person whom he has reason to believe to have committed or abetted any offence punishable under section 47, section 49, section 55, or section 56

Power of Collector to issue warrant of arrest.

72. If any Collector or any Magistrate empowered to try offences punishable under this Act, upon information received, and after such inquiry (if any) as he thinks necessary, has reason to believe that any offence punishable under section 47, section 49, section 55, or section 56 has been, or is likely to be, committed or abetted,

Power to issue search warrant.

he may issue a warrant to search for any-[intoxicant]¹, material, still, utensil, implement or apparatus in respect of which the alleged offence has been, or is likely to be, committed or abetted, or any document which throws or is likely to throw any light on the alleged offence.

73. The Collector or any Subdivisional Magistrate or Magistrate of the first class may, at any time,—

- (a) arrest, or direct the arrest in his presence of, any person for whose arrest he is competent at the time and in

Power of Collector or Magistrate to... or

1. Substituted by the A. O. for "excisable article".

2. Substituted by *ibid* for "L. G."

(Secs. 74-76)

the circumstances to issue a warrant under section 71
or

(b) search, or direct a search to be made in his presence at
any place for the search of which he is competent to
issue a search-warrant under section 72.

Duty to
search with-
out a
warrant.

74. Whenever any Excise Officer not below such rank as the [Provincial Government]¹ may, by notification², prescribe, has reason to believe that an offence punishable under section 47, section 49, section 55, or section 56 has been, is being, or is likely to be, committed or abetted, and that a search-warrant cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence,

he may, after recording the grounds of his belief, at any time by day or night enter and search any place, and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act ; and

may detain and search, and, if he thinks proper, arrest, any person found in such place whom he has reason to believe to have committed or abetted any such offence as aforesaid.

Information
and aid to
Excise
Officers.

75. (1) Every officer of the Police, Salt, Customs and Land revenue Departments, shall be bound, subject to any rules made under section 89, clause (l), to give immediate information to an Excise Officer of all breaches of any of the provisions of this Act which may come to his knowledge.

(2) Every officer referred to in sub-section (1), and every village chaukidar and dasadar, shall be bound, subject to any rules made under section 89, clause (l), to give reasonable aid to any Excise Officer in carrying out the provisions of this Act, or of any rule, notification, or order made, issued or given under this Act, upon request made by such officer.

Duty of
owners and
occupiers of
land and
other
persons to
give notice
of unlicensed
manufacture.

76. Whenever any [intoxicant]³ is manufactured on any land or premises, or any hemp plant is cultivated, or any portion of the hemp plant from which an intoxicating drug can be manufactured or produced is collected, on any land, in contravention of this Act,

all owners and occupiers of such land or premises, and their agents, and all panchayats, village-headmen, patcaris, sarbarikars, chaukidars and dasadars of the village,

shall, in the absence of reasonable excuse, be bound to give notice of the fact to a Magistrate or an officer of the Excise, Police or Land revenue Department, as soon as the fact comes to their knowledge.

1. Substituted by the A. O. for "L. G."

2. See Orissa L. S. R. & O., Vol. I, Pt. VII.

3. Substituted by the A. O. for "excitable article".

(Sects. 77-78)

77. (1) A Collector may, without the order of a Magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have power to inquire into or try under the provisions of Chapter XV of the Code of Criminal Procedure, 1898, relating to the place of inquiry or trial.

What
Excise Of-
ficers may
investigate
offences.

(2) Any other Excise Officer specially empowered¹ in this behalf by the [Provincial Government]² in respect of all or any specified class of offences punishable under this Act may, without the order of a Magistrate, investigate any such offence which a Court having jurisdiction over the local area to which such officer is appointed would have power to inquire into or try under the aforesaid provisions.

78. (1) Any Collector, or any Excise Officer empowered under section 77, sub-section (2), may, after recording in writing his reason for suspecting the commission of an offence which he is empowered to investigate, exercise—

Powers and
duties of
Excise
Officers in-
vestigating
offences.

(a) any of the powers conferred upon a Police Officer making an investigation, or upon an officer in charge of a police-station, by sections 160 to 171 of the Code of Criminal Procedure, 1898, and,

(b) as regards offences punishable under section 47, section 49, section 55, or section 56 of this Act — any of the powers conferred upon Police Officers in respect of cognizable offences by clause *first* of sub-section (1) of section 54 and by section 56 of the said Code;

and the said portions of the said Code shall apply accordingly, subject to any restrictions or modifications prescribed by the [Provincial Government]² by rule made under section 89, clause (o).

(2) Subject to any restrictions prescribed¹ by the [Provincial Government]², a Collector or an Excise Officer empowered under section 77, sub-section (2), may, without reference to a Magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any person concerned, or supposed to be concerned, in any offence which he or any Excise Officer subordinate to him has investigated.

(3) For the purposes of section 156 of the Code of Criminal Procedure, 1898, the area to which an Excise Officer empowered under section 77, sub-section (2), is appointed shall be deemed to be a police-station, and such officer shall be deemed to be the officer in charge of such station.

(4) As soon as an investigation by a Collector or by an Excise Officer empowered under section 77, sub-section (2), has been completed, if it appears that there is sufficient evidence to justify the for-

1. See Orissa L. S. R. & O., Vol I, Pt. VII.

2. Substituted by the A. O. for "L. G."

THE BIHAR AND ORISSA EXCISE ACT, 1915 [B. & O. Act]

(Sec. 79)

warding of the accused to a Magistrate, the investigating officer, unless he proceeds under sub-section (2) of this section or under section 68 of this Act, shall submit a report (which shall, for the purposes of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a Police-report) to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on Police-reports.

Security and
bail.

79. (1) Whenever a Collector or Magistrate issues a warrant under this Act for the arrest of any person, he shall direct, by endorsement on the warrant, that, if such person executes a bond with sufficient sureties for his attendance before the Collector or before an Excise Officer empowered under section 77, sub-section (2), to investigate the case, at a specified time and thereafter until otherwise directed by the Collector or an Excise Officer empowered as aforesaid, the officer to whom the warrant is directed shall take such security, and shall release such person from custody.

(2) The endorsement shall state—

- (a) the number of sureties,
- (b) the amount in which they, and the person for whose arrest the warrant is issued, are respectively to be bound, and
- (c) the time at which such person is to attend as aforesaid.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Collector or to an Excise Officer empowered as aforesaid.

(4) Whenever any person is arrested under this Act, otherwise than under a warrant, and is prepared to give bail, he shall be released on bail, or, at the discretion of the officer releasing him, on his own bond.

(5) Any Excise Officer not below such rank as the [Provincial Government]¹ may, by notification, prescribe, may release persons on bail or on their own bond.

(6) Bonds taken under this section from persons arrested otherwise than under warrant shall bind such persons to appear before the Collector or an Excise Officer empowered under section 77, sub-section (2), to investigate the case.

(7) The provisions of sections 498 to 502, 513, 514 and 515 of the Code of Criminal Procedure, 1898, shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section.

¹ Substituted by the A. O. for "L. G."

(Secs. 80-82)

80. (1) Articles seized under the warrant of the Collector and, unless security for their appearance before the Collector be taken, persons arrested under such a warrant, shall be produced before the Collector.

Production
of articles
seized
and persons
arrested

(2) Articles seized under section 69, section 70, or section 72 and persons arrested under this Act, by person or officers not having authority to release arrested persons on bail or on their own bond, shall be produced before or forwarded to—

- (a) the Collector or an Excise Officer empowered under section 77, sub-section (2), to investigate the case, or
- (b) the nearest Excise Officer who has authority to release arrested persons on bail or on their own bond, or
- (c) the officer in charge of the nearest police-station, whoever is nearer.

(3) When a person arrested is produced before an Excise Officer who has authority to release arrested persons on bail or on their own bond, or before an officer in charge of a police-station, such officer shall forward such person to, or take security for his appearance before, the Collector or the Excise Officer empowered under section 77, sub-section (2), to investigate the case.

(4) When any articles seized cannot conveniently be conveyed before an officer referred to in sub-section (1) or sub-section (2), as the case may be, the person making the seizure shall dispose of them in some place of safety and forthwith report the seizure to such an officer.

81. (1) All officers in charge of police-stations shall take charge of and keep in safe custody, pending the orders of a Magistrate, or of the Collector, or of an Excise Officer empowered under section 77, sub-section (2), to investigate the case, all articles seized under this Act which may be delivered to them and shall allow any Excise Officer who may accompany such articles to the police-station or who may be deputed for the purpose by an official superior, to affix his seal to such articles and to take samples of and from them.

Custody by
police
officers
of
articles
seized

(2) All samples so taken shall be sealed with the seal of the officer in charge of the police-station.

82. When any Excise Officer below the rank of Collector, or any officer in charge of a police-station, makes, or receives information of, any arrest, seizure, or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure, or search, or of the information received, to the Collector, and to the Excise Officer (if any) empowered under section 77, sub-section (2), within the local limits of whose jurisdiction the arrest, seizure, or search was made.

Reports of
arrests
etc.

(Sect. 53.57)

*Execution
of Collector's
warrant.*

*Maximum
period of
detention.*

*Application
of certain
provisions
of the Code
of Criminal
Procedure.*
1898.

85. (1) Save as is in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1898, relating to arrests, detentions in custody, searches, summonses, warrants of arrest, search warrants and the production of persons arrested shall apply, so far as may be, to arrests, detentions and searches made, summonses and warrants issued, and the production of persons arrested under this Act.

(2) For the purposes of the said provisions of the said Code, a Collector shall be deemed to be a Court.

(3) Officers to whom a Collector's warrant is directed or endorsed, and officers (other than Collectors) making arrests, searches or seizures under this Act, shall, for the purposes of the said provisions of the said Code, be deemed to be Police Officers.

86. No Magistrate other than—

(b) a Magistrate of the third class specially empowered by the District Magistrate in this behalf, the District Magistrate under this Act.

87. No Magistrate shall be appointed to the third class specially empowered by the District Magistrate in this behalf, to try any offence punishable under this Act.

(a) in section 47, section 49, section 53, or section 56, except on his own knowledge or suspicion, or on the com-
12.

(Sects. 88-89)

plaint or report of an Excise Officer or an officer empowered in this behalf by the [Provincial Government]¹;

or

- (b) in section 57, section 61, clause (d) or clause (e), or section 62, except on the complaint or report of the Collector or an Excise Officer authorized by the Collector in this behalf.

88. The provisions of section 191 of the Code of Criminal Procedure, 1898, shall not apply in any case in which a Magistrate (not being the Collector) takes cognizance of an offence under this Act on the report of any officer referred to in clause (a) or clause (b) of section 87.

Bar to transfer of trial on application of accused.

CHAPTER X

MISCELLANEOUS

89. (1) The [Provincial Government]¹ may make rules² to carry out the objects of this Act or any other law for the time being in force relating to the excise-revenue.

Power of Provincial Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing provision, the [Provincial Government]¹ may make rules²—

(a) for prescribing the powers and duties of officers of the Excise Department;

... powers by the Board, ... the Excise Commis-
... , clause (g);

(c) for declaring in what cases or classes of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed under this Act or under any rule made hereunder, and for prescribing the time and manner for presenting, and the procedure for dealing with, such appeals;

(d) for regulating the import, export or transport of any [intoxicant]³;

(e) for regulating the periods for which licenses for the wholesale or retail vend of any [intoxicant]³ may be

1. Substituted by the A. O. for "I. G."

2. See Orissa L. S. R. & O. Vol. I, Pt. VII.

3. Substituted by the A. O. for "excisable article".

THE BIHAR AND ORISSA EXCISE ACT, 1915 [B. & O. Act
(Sec. 89)

- granted, and the number of such licenses which may be granted for any local area;
- (f) for prohibiting the grant of licenses for the retail sale of any [intoxicant]¹ at any place or within any local area described in the rules, or for defining the places in the vicinity of which shops for the retail sale of any [intoxicant]¹ shall not ordinarily be licensed;
 - (g) for prohibiting the grant to specified classes of persons of licenses for the retail sale of any [intoxicant]¹;
 - (h) for declaring, either generally, or in respect of areas described in the rules, the persons or classes of persons to whom any [intoxicant]¹ may or may not be sold;
 - (i) for regulating the procedure to be followed and prescribing the matters to be ascertained before any license for the wholesale or retail vend of any [intoxicant]¹ is granted for any locality;
 - (k) for restricting the exercise of any of the powers conferred by clause (a) of sub-section (1) of section 68 and by sections 69 and 70,
 - (l) for declaring the Excise Officers to whom, and the manner in which, information or aid should be given under section 75;
 - (m) for the grant of expenses to witnesses;
 - (n) for the grant of compensation for loss of time to persons released by any Excise Officer under this Act on the ground that they have been improperly arrested, and to persons charged before a Magistrate with offences punishable under this Act and subsequently acquitted;
 - (o) for prescribing restrictions or modifications in the application to Excise Officers of the provisions of the Code of Criminal Procedure, 1898, relating to powers of Police Officers which are referred to in section 78, sub-section (1) of this Act.

(3) The powers conferred by this section for making rules are subject to the condition that the rules be made after previous publication;
Provided that any such rules may be made without previous publication if the [Provincial Government]² considers that they should be brought into force at once.

1. Substituted by the
2. As to the procedure
Orissa General Clauses Act.
3. Substituted by the A

(Sec. 90)

90. The Board may make rules¹—

- (1) for regulating the manufacture, supply, or storage of any [intoxicant]², and in particular, and without prejudice to the generality of this provision, may make rules for regulating—
Power of
Board to
make rules.
- (a) the establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of any [intoxicant]², and the provision and maintenance of fittings, implements and apparatus therein;
 - (b) the bottling of liquor for purposes of sale;
 - (c) the cultivation of the hemp plant;
 - (d) the collection of portions of the hemp plant from which intoxicating drugs can be manufactured or produced, and the manufacture or production of intoxicating drugs therefrom;
 - (e) the tapping of *tari*-producing trees and the drawing of *tari* from trees;
 - (f) the marking of *tari*-producing trees in areas notified under section 14, sub-section (1), and the maintenance of such marks;
- (2) for fixing the strength, price or quantity in excess of or below which any [intoxicant]² shall not be supplied or sold, and the quantity in excess of which denatured spirit shall not be possessed, and for prescribing a standard of quality for any [intoxicant]²;
- (3) for declaring how spirit manufactured in [all the Provinces of India]³ shall be denatured;
- (4) through
the
- (5) for ascertaining whether any spirit so manufactured has been denatured;
- (6) for var-
this
any
- (7) for prescribing the scale of fees or the manner of fixing the fees payable in respect of any exclusive privilege

1. See Orissa L. S. R. & O., Vol. I, Pt. VII.

2. Substituted by the A. O. for "excisable article".

3. Substituted by the I. O. for "British India".

4. Substituted by the A. O. for "Government officers".

THE BIRAR AND ORISSA EXCISE ACT, 1915 {B. & O. Act
(Sec. 90)}

granted under section 22 or any license, permit or pass granted under this Act, or in respect of the storing of any [intoxicant]¹;

- (8) for regulating the time, place and manner of payment of such fees;
- (9) for prescribing the restrictions under which or the conditions on which any license, permit or pass may be granted, and in particular, and without prejudice to the generality of this provision, may make rules for—
 - (i) prohibiting the admixture with any [intoxicant]¹ of any article deemed to be noxious;
 - (ii)
 - (iii) prescribing the nature and regulating the arrangement of the premises in which any [intoxicant]¹ may be sold, and prescribing the notices to be exposed at such premises,
 - (iv)
the licensee him in his
 - (v) prohibiting the sale of any [intoxicant]¹ except for cash,
 - (vi) prescribing the days and hours during which any licensed premises may or may not be kept open, and providing for the closing of such premises on special occasions,
 - (vii) prescribing the accounts to be maintained and the returns to be submitted by licensees, and
 - (viii) regulating the transfer of licenses;
- (10) for ~~regulating~~
F
licenses,
... etc.;

- (11) for the payment of compensation to licensees whose premises are closed under section 26 or under any rule made under sub-clause (vi) of clause (9) of this section;
- (12) for prescribing the time, place and manner of levying duty on [intoxicants]²;
- (13) for providing for the destruction or other disposal of any [intoxicant]¹ deemed to be unfit for use; and
- (14) for regulating the disposal of things confiscated under this Act.

1. Substituted by the A. O. for "exciseable article".
2. Substituted by ibid for "excisable articles".

(Secs. 91-94)

Explanation.—Fees may be prescribed under clause (7) of this section at different rates for different classes of exclusive privileges, licenses, permits, passes or storage, and for different areas.

91. Any power conferred by this Act on the Board may be exercised from time to time as occasion requires.

Powers of Board exercisable from time to time.

92. All rules made, and notifications issued, under this Act shall be published in the [*Official Gazette*]¹, and on such publication shall have effect as if enacted in this Act.

Publication and effect of rules and notifications.

93. (1) The following moneys, namely,—

Recovery of dues.

(a) all excise-revenue,

(b) any loss that may accrue when a grant has been taken under management by the Collector or transferred by him under section 46, and

(c) all amounts due to the [Provincial Government]² by any person on account of any contract relating to the excise-revenue,

may be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his movable property, or by the process prescribed for the recovery of arrears of revenue.

(2) When a grant has been taken under management by the Collector, or has been transferred by him, under section 46, the Collector may recover, in any manner authorized by sub-section (1), any money due to the grantee by any lessee or assignee.

(3) When any money is due, in respect of an exclusive privilege, to a grantee referred to in section 23, from any person holding under him,

such grantee may apply to the Collector, and the Collector may recover such money on his behalf in either of the ways provided by sub-section (1) :

Provided that nothing in this sub-section shall affect the right of any such grantee to recover any such money by civil suit.

94. The [Provincial Government]³ may, by notification⁴, either wholly or partially, and subject to such conditions (if any) as it may think fit to prescribe, exempt any [intoxicant]⁵ from all or any of the provisions of this Act, either throughout the Province of [Bihar and] Orissa, or in any specified local area, or for any specified period or occasion, or as regards any specified class of persons.

Power of Provincial Government to exempt intoxicants from provisions of Act.

1. Substituted by the A. O. for "Bihar and Orissa Gazette".

2. Substituted by *ibid* for "Government".

3. Substituted by *ibid* for "L. G."

4. See Orissa L. S. R. & O., Vol. I, Pt. VII.

5. Substituted by the A. O. for "excisable article".

THE BIHAR AND ORISSA
EXCISE ACT, 1915

[B. & O. Act II of 1915]

(Secs. 95-98)

Bar of certain suits. 95. No suit shall lie in any Civil Court against the [Crown]¹ or any Excise Officer for damages for any act in good faith done or ordered to be done in pursuance of this Act or of any other law for the time being in force relating to the excise-revenue.

Limitation of suits and prosecutions. 96. No Civil Court shall try any suit against the [Crown]¹ in respect of anything done, or alleged to have been done, in pursuance of this Act, and, except with the previous sanction of the [Provincial Government]², no Magistrate shall take cognizance of any charge made against any Excise Officer under this Act or any other law relating to the excise-revenue, or made against any other person under this Act, unless the suit or prosecution is instituted within six months after the date of the act complained of.

97. Section 261 of the Bengal Municipal Act, 1884³, shall not apply to—

- (a) any distillery, brewery, warehouse, or other place of storage licensed, established, authorized, or continued under this Act, or
- (b) the premises used for the manufacture or sale of any [intoxicant]⁴ by the holder of a license granted under this Act for such manufacture or sale.

98. (1) On and from the commencement of this Act, the Bengal Excise Act, 1909⁵, shall cease to be in force in the Province of Bihar and Orissa, and, for the purposes of section 25 of the Bengal General Clauses Act, 1899⁶, shall be deemed to have been repealed in the said Province and to be re-enacted by this Act.

(2) Every license, permit or pass which was granted under any section of the Bengal Excise Act, 1909⁵, and is in force at the commencement of this Act, shall be deemed to have been granted under the corresponding section of this Act, and shall (unless previously cancelled, suspended, withdrawn, or surrendered under Chapter VI of this Act) remain in force for the period for which it was granted.

1. Substituted by the A. O. for "Secretary of State for India in Council".

2. Substituted by 1014 for "L. G."

3. Repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922), see now s. 250 of that Act, Printed post.

4. Substituted by the A. O. for "excisable article".

5. Printed in the Bengal Code, Ed. 1939, Vol. III, p. 231.

6. See now the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act I of 1917), Printed post.

BIHAR AND ORISSA ACT III OF 1916

(THE BIHAR AND ORISSA DECENTRALIZATION ACT, 1916)¹

(12th April, 1916)

An Act to decentralize and otherwise to facilitate the administration of certain enactments in force in Bihar and Orissa.

Whereas it is expedient to decentralize and otherwise to Preamble, facilitate the administration of certain enactments in force in Bihar and Orissa;

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows :—

1. This Act may be called the Bihar and Orissa Decentralization Act, 1916. Short title.

2. The enactments specified in the third column of the Schedule are hereby amended, to the extent and in the manner specified in the fourth column, in the areas specified in the fifth column thereof.

3. Any appointment, notification, order, scheme, rule, form or by-law made or issued by an authority for the making or issuing of which a new authority is substituted by or under this Act, shall, unless inconsistent with this Act, be deemed to have been made or issued by such new authority unless and until superseded by an appointment, notification, order, scheme, rule, form or by-law made or issued by such new authority.

Amendment
of certain
enactments.

Saving of
orders, etc.,
issued by
previous
authorities.

THE SCHEDULE

PART I.—BENGAL REGULATIONS

Year	No.	Short title	Amendments	Areas in which amendments are to have effect.
1	2	3	4	5
1810	2 XIX	The Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810.	In section 7, for the words "report to Government whether it should in their opinion" substitute the words "direct whether it should".	All areas in Bihar and Orissa in which the Regulation is in force.

1. For Statement of Objects and Reasons, see B. and O. Gazette, 1915, Pt. V, pp. 60 and 61; for Report of Select Committee, see ibid, 1916, Pt. V, pp. 1 and 2; for Proceedings in Council, see ibid, 1915, Pt. VI, pp. 383-403; also see ibid, 1916, Pt. VI, p. 11.

EXTENT.—See the Schedules to this Act, col. 5. The application of this Act is barred in—

(i) the district of Angul by the Angul Laws Regulation, 1936 (Regulation V of 1936), s. 3 (2).

(ii) the district of Khondmals by the Khondmals Laws Regulation, 1936 (Regulation IV of 1936) s. 3 (2).

2. Printed in Vol. I, p. 109 of this Code.

THE BIHAR AND ORISSA

(B. & O. I.)

(The Schedule)

THE SCHEDULE

PART I.—BENGAL REGULATIONS—concl.

Year	No.	Short Title	Amendments	Area in which amendment has effect
1	2	3	4	5
1822	1 VII	The Bengal Land revenue Settlement Regulation, 1822.	In section 10, clause First, second para. graph,— (i) the amendment made by the Repealing and Amending Act, 1903, Schedule II, Part I, is repealed; and (ii) for the words "shall be competent to the Governor General in Council" substitute the words "all shall be competent to the [Provincial Government] or such other authority to whom the power to confirm settlements may be delegated by the [Provincial Government] by notification in the [official Gazette]".	All areas in Bihar & Orissa which are under English influence Date
1823	4 IX	The Bengal Land revenue Settlement Regulation, 1823	In section 4, first paragraph,— (i) omit the words "and subject to the orders of Government"; (ii) the amendment made by the Repealing and Amending Act, 1903, Schedule II, Part I, is repealed; and (iii) for the words "Governor General in Council" substitute the words "Board of Revenue".	Date

PART II.—BENGAL ACTS

Year	No.	Short Title	Amendments	Area in which amendments are to have effect
1	2	3	4	5
1871	5 IV	The Puri Lodging-House Act, 1871.	In section 1 (Definition of the "Health officer"), section 2, and in section 20, for the words "Lieutenant-Governor of Bengal" substitute the words "Commissioner of the Division".	All areas in Bihar and Orissa which the Act is in force Date
1876	6 VII	The Land Registration Act, 1876.	In section 64, second proviso, for the word "Board" substitute the words "Commissioner of the Division".	Date

1. Printed in Vol I, p. 194 of this Code.
2. Substituted by the A. O. for "L. G."
3. Substituted by *ibid* for "L. o. G."
4. Printed in Vol I, p. 247, of this Code
5. Repealed and re-enacted by the Bihar and Orissa Places of Pilgrimage Act 1920 (B. & O. Act II of 1920), printed post.
6. Printed in Vol II, p. 189 of this Code.

(The Schedule)
THE SCHEDULE
PART II.—BENGAL ACTS—contd.

Year	No.	Short Title	Amendments	Areas in which amend- ments are to have effect
				1 2 3 4 5
1879	1 IX	The Court of Wards Act, 1879.	1. In clause (e) of section 6, for the words "Local Government" substitute the word "Court". 2. In section 15, second paragraph, omit the words "with the sanction of the Lieutenant-Governor" and also the words "with the like sanction".	All areas in Bihar and Orissa in which the Act is in force. Ditto.
1880	2 VI	The Bengal Drainage Act, 1880.	In section 39, for the words "Board of Revenue" substitute the words "Commissioner of the Division".	Ditto.
1882	3 II	The Bengal Embankment Act, 1882.	1. In section 61, first paragraph, for the words "Lieutenant-Governor" substitute the words "Commissioner of the Division". 2. In section 73 for the words "Board of Revenue" substitute the words "Commissioner of the Division".	Ditto.
1885	4 VIII	Bengal Tenancy Act, 1885.	1. In clause (2) of section 40 for the words "Local Government" at the end of the clause substitute the words "Board of Revenue". 2. In clause (3) of section 56 for the words "Local Government" substitute the words "Board of Revenue". 3. In clause (2) of section 57 for the words "Local Government" substitute the words "Board of Revenue". 4. In clause (1) of section 80 for the words "Local Government" substitute the words "Board of Revenue". 5. In clause 3 of section 163 for the words "Local Government" substitute the words "Board of Revenue".	Ditto. Ditto. Ditto. Ditto.
1897	5 V	The Estates Partition Act, 1897.	1. In section 41,— (i) in sub-section (1) for the words "Lieutenant-Governor" substitute the word "Board" and for the word "he" substitute the word "it"; and (ii) in sub-section (3) for the words "Lieutenant-Governor" in the two places in which they occur, substitute the word "Board".	All areas in Bihar and Orissa.

1. Repealed by the Orissa Court of Wards Act, 1917 (Orissa Act XXVI of 1947), s. 2 and Sch.
 2. Repealed by the Orissa Laws Regulation, 1936 (Orissa Regulation I of 1936) s. 9 and Sch.
 3. Printed in Vol. II, p. 317 of this Code.
 4. Repealed by the Orissa Tenancy Act, 1913 (Orissa Act II of 1913) s. 2 and Sch.
 5. Printed in Vol. II, p. 291 of this Code.

THE BIHAR AND ORISSA
DECENTRALIZATION ACT, 1916

(The Schedule)

[B. & O. Act
III of 1916]

THE SCHEDULE

PART II.—BENGAL ACTS—concl.

Year	No.	Short Title	Amendments	Areas in which amendments are to have effect				
				1	2	3	4	5
1897— concl.	V—concl.	The Estates Partition Act, 1897—concl	2. In section 102, for the words "Lieutenant-Governor", in the two places in which they occur, substitute the word "Board". 3. In section 103,— (i) in sub-section (1) for the words "Lieutenant Governor" substitute the word "Board" and for the word "he", substitute the word "it"; and (ii) in sub-section (2) for the words "Lieutenant-Governor", substitute the word "Board". 4. In section 110, sub-section (1), for the words "Lieutenant-Governor" substitute the word "Board".	All areas Bihar Orissa	Distr	Distr	Distr	Distr

PART III.—BIHAR AND ORISSA ACT

Year	No.	Short Title	Amendments	Areas in which amendments are to have effect					
				1	2	3	4	5	
1913	III.	Orissa Tenancy Act, 1913.	In clause (2) (iii) of section 47, proviso to clause (3) of section 65, clause (2) of section 66, clause (1) of section 90, and, clause (3) of section 217, for the words "Local Government" substitute the words "Board of Revenue".	All areas in the districts of Cuttack, Puri and Balasore in which the Act is in force.					

BIHAR AND ORISSA ACT I OF 1917
(THE BIHAR AND ORISSA GENERAL CLAUSES ACT, 1917)

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MISCELLANEOUS

29. Recovery of fines
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31. Meaning of service by post
32. Citation of enactments
"----- by-laws.
under the Govern

BIHAR AND ORISSA ACT I OF 1917

(THE BIHAR AND ORISSA GENERAL CLAUSES ACT, 1917)¹

(25th April, 1917)

An Act for shortening the language used in certain Acts in force in Bihar and Orissa and for other purposes.

Whereas it is expedient to provide for the interpretation of certain Acts in force in Bihar and Orissa, for shortening the language used therein and for making certain other provisions relating to such Acts;

And whereas the previous sanction of the [Central Government]² has been obtained, under section 79 of the Government of India Act, 1915, to the passing of this Act;

It is hereby enacted as follows:—

PRELIMINARY

1. This Act may be called the Bihar and Orissa General Short title, Clauses Act, 1917.

2. The Bengal General Clauses Act, 1899³, so far as it applies to Bihar and Orissa, is hereby repealed. Repeal of Bengal Act I of 1899.

3. The provisions of sections 4 and 6 to 32 shall apply to this Act, and shall apply, and shall be deemed always to have applied, to all Bihar and Orissa Acts made whether before or after the commencement of this Act. Application of Act to other enactments.

DEFINITIONS

4. In all Bihar and Orissa Acts [*and Bihar Acts*]⁴, unless there is anything repugnant in the subject or context— Definitions.

(1) “abet” with its grammatical variations and cognate expressions shall have the same meaning as in the Indian Penal Code; “Abet.”

(2) “act,” used with reference to an offence or a civil wrong, shall include a series of acts; and words which refer to acts done shall extend also to illegal omissions; “Act.”

(3) “affidavit” shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing; “Affidavit.”

1. For Statement of Objects and Reasons, see B. and O. Gazette, 1917, Pt. V, p. 12; for Report of the Select Committee (no Report); and for Proceedings in Council, see *ibid.*, 1917, Pt. VI, pp. 13 and 44.

EXTENT.—See the preamble. The Act is in force in the districts of Angul, and the Khondmals. See the Angul and the Khondmals Laws Regulation, 1936 (Reg. V and IV of 1936) s. 3.

2 Substituted by the A. O. for “G. G.”

3 Printed in Vol. III of Bengal Code, Ed. 1932, p. 163.

4 Inserted by the A. O.

THE BIHAR AND ORISSA

[B. & O. Ad]

(Sec. 4)

"Barrister."

"Bengal
Act.""Bihar
Act.""Bihar and
Orissa Act.""British
possession."

"Chapter."

"Collec.
tor.""Com.
mencement."

(4) "barrister" shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland;

(5) "Bengal Act" shall mean an Act made by the [Lieutenant-Governor of Bengal in Council], under the Indian Councils Act, 1861¹, or the Indian Councils Acts, 1861 and 1892², or the Indian Councils Acts, 1861 to 1909³;

²(5a) "Bihar Act" shall mean an Act made by the Provincial Legislature or the Governor of Bihar under the Government of India Act, 1935;

(6) * * * * * "Bihar and Orissa Act" shall mean an Act made by the [Lieutenant-Governor]⁴ of Bihar and Orissa in Council under the Indian Councils Acts, 1861 to 1909⁵, or the Government of India Act, 1915, for by the Local Legislature or the Governor of Bihar and Orissa or of Bihar under the Government of India Act⁶, and include—

(i) a Bengal Act made after the eighteenth day of January, 1899, which is still in force in Bihar and Orissa;

(ii) with respect to clauses (3), (32), (34), (37), and (54) of this section and in sections 6, 15, 19, 24, 25, 26, 29 and 32 (1), a Bengal Act made after the first day of June, 1867, which is still in force in Bihar and Orissa;

(8) * * * * * "British Possession" shall mean any part of His Majesty's dominions, exclusive of the United Kingdom, and where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession;

(10) "Chapter" shall mean a Chapter of the Act in which the word occurs;

(11) "Collector" shall mean the chief officer in charge of the revenue administration of a district and shall include a Deputy Commissioner;

(12) "commencement," used with reference to an Act, shall mean the day on which the Act comes into force:

1. Shall stand unmodified; see the A. O.

2. Printed in the Collection of Statutes Relating to India, Ed. 1913.

3. Inserted by the A. O.

4. Definition of "Bihar and Orissa" omitted by *ibid.*

5. Inserted by *ibid.*

6. Definition of "British India" omitted by *ibid.*

(Sec. 4)

- (13) "Commissioner" shall mean the chief officer in charge "Commissioner." of the revenue administration of a division;
- (14) "Consular Officer" shall include consul-general, consul, "Consular Officer." vice-consul, consular agent, pro-consul, and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent;
- (15) "District Court" shall mean the principal Civil Court "District Court" of original jurisdiction of a district; but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;
- (16) "District Judge" shall mean the Judge of a District "District Judge." Court;
- (17) "document" shall include any matter written, express- "Document." ed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter;
- (18) "enactment" shall include a Regulation (as hereinafter "Enact- defined) and any Regulation of the Bengal Code, "ment" and shall also include any provision contained in any Act or in any such Regulation as aforesaid;
- (19) "father," in the case of any one whose personal law "Father," permits adoption, shall include an adoptive father;
- (20) "financial year" shall mean the year commencing on "Financial year," the first day of April,
- (21) *
- (22) a thing shall be deemed to be done in "good faith" "Good faith," where it is in fact done honestly, whether it is done negligently or not;
- (23) "Government" or "the Government" shall include "Govern- ment" the [Provincial Government]² as well as the [Central Government];
- (24) *
- (25) "High Court," used with reference to Civil proceed- "High Court." ings, shall mean the highest Civil Court of appeal in the part of Bihar and Orissa, in which the Act containing the expression operates;

Definition of "Gazette" omitted by the A.O.

Substituted by *ibid* for "L.G."

Substituted by *ibid* for "Government of India".

4. Definition of "Government of India" omitted by *ibid*.

"His
Majesty"
or "the
King."

(Sec. 4)

(26) "His Majesty" or "the King" shall include his successors;

"Immovable
property."

(27) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

"Imprison-
ment."

(28) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

(29) * * * * *

"Local
authority."

(30) "Local authority" shall mean a Municipal Committee, District Board, or any other authority entrusted by [any Government]¹ with, or legally entitled to, the control or management of a municipal or a local fund;

(31) * * * * *

"Magis-
trate."

(32) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;

"Master"
(of a ship).

(33) "master," used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship;

Month."

(34) "month" shall mean a month reckoned according to the British calendar;

"Moveable
property."

(35) "moveable property" shall mean property of every description except immovable property;

"Notifica-
tion."

(36) "notification" shall mean a notification in the [Official Gazette]²;

"Oath."

(37) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

"Offence."

(38) "offence" shall mean any act or omission made punishable by any law for the time being in force;

"Part."

(39) "Part" shall mean a part of the Act or Regulation in which the word occurs;

1. Definition of "India" omitted by the A. O.
2. Substituted by *ibid* for "the Government".
3. Definition of "Local Government" omitted by *ibid*.
4. Substituted by *ibid* for "Gazette".

(Sec. 4)

(40) "person" shall include any company or association or body of individuals, whether incorporated or not; ^{"Person."}

(41) "Political Agent" shall include—

(a) the principal officer representing the [Crown]¹ in any territory or place beyond the limits of [all the Provinces of India]², and ^{"Political Agent"}

(b) any officer * * * * appointed * to exercise all or any of the powers of a Political Agent for any place not forming part of [all the Provinces of India]³ under the law for the time being in force relating to foreign jurisdiction * * *;

(42) * * * *

(43) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code; ^{"Public nuisance."}

(44) "registered," used with reference to a document, shall mean registered in [all the Provinces of India]⁴ under the law for the time being in force for the registration of documents; ^{"Register-ed."}

(45) "Regulation" shall mean a regulation made under the Government of India Act, 1870, or the Government of India Act, 1915; ^{"Regula-tion."}

(46) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment; ^{"Rule."}

(47) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs; ^{, Schedule}

(48) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874; ^{"Schedule-District."}

(49) "section" shall mean a section of the Act or Regulation in which the word occurs; ^{"Section."}

1. Substituted by the A. O. for "Government".

2. Substituted by the I. O. for "British India".

3. The words "of the Government of India or of any Local Government" omitted by the A. O.

4. The words "by the Government of India or the Local Government" omitted by *ibid.*

5. The words "and extradition" omitted by *ibid.*

6. Definition of "Province" omitted by *ibid.*

THE BIHAR AND ORISSA

(Sec. 5)

{B. & O. A.

"Ship."

(50) "ship" shall include every description of vessel used in navigation not exclusively propelled by oars;

"Sign."

(51) "sign" with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions;

"Son."

(52) "son," in the case of any one whose personal law permits adoption, shall include an adopted son;

(53) "sub-section" shall mean a sub-section of the section in which the word occurs;

"Sub-section."

(54) "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

"Swear."

(55) "vessel" shall include any ship or boat or any other description of vessel used in navigation;

"Vessel."

(56) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property;

"Will."

(57) expressions referring to "writing" shall be construed as including references to printing, lithography, photograpy and other modes of representing or reproducing words in a visible form; and

"Writing."

(58) "year" shall mean a year reckoned according to the British calendar.

Continuance
of certain
definitions
for purposes
of certain
Acts

5. In any Bengal Act¹ made between the first day of June, 1867, and the eighteenth day of January, 1899, which is still in force in Bihar and Orissa, unless there is anything repugnant in the subject or context

(1) "land" includes houses and buildings and corporeal hereditaments and tenements of any tenure, unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure; and

(2) "person" includes any incorporated company or incorporated association of persons.

¹. Bengal Acts still in force in Orissa are printed in Vol. II of the Code.

1st 1917

GENERAL CLAUSES ACT, 1917

(Secs. 6-8)

GENERAL RULES OF CONSTRUCTION

6. (1) Where any Bihar and Orissa Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which the assent thereto in pursuance of section 81 of the Government of India Act, 1915.

[(a) Where any Bihar Act is not expressed to come into operation on a particular day, then it shall come into operation, if it is an Act of the Legislature, on the day when the assent thereto of the Governor, the Governor-General or His Majesty, as the case may require, is first published in the Official Gazette, and if it is an Act of the Governor, on the day on which it is first published as an Act in the Official Gazette.]

(2) Unless the contrary is expressed, a Bihar and Orissa Act for Bihar Act^s shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

7. In every Bihar and Orissa Act for Bihar Act^s the date of such publication as is mentioned in section 6, sub-section (1), shall form part of the title of the Act and shall form the date on which Act is published.

8. Where any Bihar and Orissa Act for Bihar Act^s repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed; or

(c) affect any right, privilege, obligation, or liability accrued, or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

1. Section 8 (1) shall stand unmodified; see the A. O.
2. Inserted by Id.
3. Inserted by Id.

Coming
into opera-
tion of Acts

THE BIHAR AND ORISSA

(Secs. 9-15)

(B. & D.)

Revival of
repealed
enactments.

9. In any Bihar and Orissa Act [or Bihar Act]¹, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

Construction
of refer-
ences to re-
pealed enact-
ments.

10. Where any Bihar and Orissa Act [or Bihar Act]¹ repeals and re-enacts, with or without modification, any provision of a former enactment, references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Commence-
ment and
termination
of time

11. In any Bihar and Orissa Act [or Bihar Act]¹, it shall be sufficient, for the purpose of excluding the first in a series of days of any other period of time, to use the word "from" and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

Computation
of time.

12. Where, by any Bihar and Orissa Act [or Bihar Act]¹, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1908,² applies.

13. In the measurement of any distance, for the purposes of any Bihar and Orissa Act [or Bihar Act]¹, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Measurement
of distances.

14. Where by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandize, then a like duty is leviable according to the same rate on any greater or less quantity.

Gender and
number.

15. In all Bihar and Orissa Acts [and Bihar Acts]¹, unless there is anything repugnant in the subject or context,—
(1) words importing the masculine gender shall be taken to include females; and
(2) words in the singular shall include the plural, and vice versa.

1. Inserted by the A. O.

2 Printed in Central Acts, Vol. V, p. 349.

3. Inserted by the A. O.

(Secs. 16-23)

POWERS AND FUNCTIONARIES

16. Where a Bihar and Orissa Act [or Bihar Act]¹ confers a power or imposes a duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires. When powers and duties to be exercised and performed
17. Where a Bihar and Orissa Act [or Bihar Act]¹ confers a power or imposes a duty on the holder of an office, as such, then the power may be exercised and the duty shall be performed by the holder for the time being of the office. Exercise of power and performance of duty by temporary holder of office.
18. Where, by a Bihar and Orissa Act [or Bihar Act]¹, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment may be made either by name or by virtue of office. Power to appoint to include power to appoint ex-officio.
19. Where, by any Bihar and Orissa Act [or Bihar Act]¹, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power. Power to appoint to include power to suspend or dismiss.
20. In any Bihar and Orissa Act [or Bihar Act]¹ it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations. Substitution of functionaries.
21. In any Bihar and Orissa Act [or Bihar Act]¹ it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations. Successors.
22. In any Bihar and Orissa Act [or Bihar Act]¹ it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior. Official chiefs and subordinates

PROVISIONS AS TO ORDERS, RULES, ETC., MADE UNDER ENACTMENTS

23. Where, by any Bihar and Orissa Act [or Bihar Act]¹, a power to make or issue any notification, order, scheme, rule, by-law or form, is conferred, the expressions used in the notification, order, scheme, rule, by-law or form shall be construed as if they were used in the same sense in the Act. Construction of orders, etc., issued under enactments.

1. Inserted by the A. O.

(Secs. 24-26)

[B. & O. A.]

Power to make to include power to add to, amend, vary or rescind, orders, rules or by-laws.

Making of rules or by-laws and issuing of orders between passing and commencement of enactment.

Provisions applicable to making of rules or by-laws after previous publication

24. Where, by any Bihar and Orissa Act [or Bihar Act]¹, a power to make or issue notifications, orders, schemes, rules, by-laws or forms is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, schemes, rules, by-laws or forms so made or issued.

25. Where, by any Bihar and Orissa Act [or Bihar Act]¹, which is not to come into operation on [the passing thereof]², a power is conferred to make rules or by-laws, or to issue orders with respect to the application of the Act or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act, then that power may be exercised at any time after [the passing thereof]³, but rules, by-laws or orders so made or issued shall not take effect till the commencement of the Act.

26. Where, by any Bihar and Orissa Act [or Bihar Act]¹, a power to make rules or by-laws is expressed to be given, subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply namely,—

- (1) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [Central Government or, as the case may be, the Provincial Government]⁴, prescribes;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

1. Inserted by the A. O.

2. Substituted by *ibid* for "the day on which the ascent thereto of the Governor-General is first published in the Gazette".

3. Substituted by *ibid* for "the ascent of the Governor-General has been published as aforesaid".

4. Substituted by the A. O. for "L. G."

(Secs. 27-31)

(5) the publication in the [official Gazette]¹ of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

27. Where any enactment is repealed and re-enacted by a Bihar and Orissa Act [or Bihar Act]², with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, by-law or form, made or issued under the repealed enactment, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, by-law or form, made or issued under the provisions so re-enacted.

Continuation
of orders,
etc., issued
under
enactments
repealed
and re-
enacted.

28. Where in any Bihar and Orissa Act [or Bihar Act]² or in any rule made under any such Act, it is directed that any order, notification or other matter shall be notified or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the [official Gazette].

Publication
of orders
and notifi-
cations in
the official
Gazette.

MISCELLANEOUS

29. Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Bihar and Orissa Act [or Bihar Act]², or any rule or by-law made under any Bihar and Orissa Act [or Bihar Act]², unless the Act, rule or by-law contains an express provision to the contrary.

Recovery of
fines

30. Where an act or omission constitutes an offence under two or more enactments, the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Provision
as to offences
punishable
under two
or more
enactments.

31. Where any Bihar and Orissa Act [or Bihar Act]² authorizes or requires any document to be served by post, whether the expression, "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Meaning
of service
by post.

1. Substituted by the A. O. for "Gazette."

2. Inserted by *Ibid.*

THE BIHAR AND ORISSA
GENERAL CLAUSES ACT, 1917

[B. & O. Act
I of 1917]

(Sects. 32-39)

Citation of
enactments,

32. (1) In any Bihar and Orissa Act [or Bihar Act]¹ and in any rule, by-law, instrument or document, made under or with reference to, any Bihar and Orissa Act [or Bihar Act]¹, any enactment may be cited by reference to the title or short title (if any) conferred thereon, or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In any Bihar and Orissa Act [or Bihar Act]¹ a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Saving of
previous
enactments,
rules and
by-laws.

33. Where any Act, rule or by-law made after the commencement of this Act continues or amends any Acts, rules or by-laws made before the commencement of this Act, the foregoing sections of this Act shall not by reason merely of such continuance or amendment affect the construction of such Acts, rules or by-laws.

Application
to ordinan-
ces and
regulations
under the
Government
of India Act,
1935.

{34. The provisions of this Act shall apply—

(a) in relation to any regulation made by the Governor of Bihar under section 92 of the Government of India Act, 1935, as they apply in relation to Acts made by the Provincial Legislature of Bihar; and

(b) in relation to any ordinance promulgated by the Governor under section 88 or section 89 of the said Act, as they apply in relation to Acts made under that Act by the Governor.]

¹ Inserted by the A. O.

BIHAR AND ORISSA ACT I OF 1919

(THE BIHAR AND ORISSA PRIMARY EDUCATION ACT, 1919)

CONTENTS

SECTIONS

1. Short title. Extent
2. Definitions
3. Issue of notification declaring primary education of children compulsory.
4. Appointment, constitution and functions of school committee
5. Duty of parent to cause children to attend school
6. Meaning of reasonable excuse
7. Issue of attendance order by Magistrate
8. Penalty for failure to obey attendance order
9. Penalty for employing a child in contravention of the Act
10. School committee may authorize member to appear
11. Exemption from compulsory education
12. Education cess
13. Amount and manner of recovery
14. Liability to pay school fees
15. Schools to be open to inspection
16. Withdrawal of notification under section 3, on default
17. Local authority to take the place of a school committee if no school committee appointed.
18. Rules

BIHAR AND ORISSA ACT I OF 1919

[THE BIHAR AND ORISSA PRIMARY EDUCATION ACT, 1919]
(26th February, 1919)

An Act to provide for the extension of primary education in the Province of Bihar and Orissa.

WHEREAS it is expedient to provide for the extension of primary education in the Province of Bihar and Orissa,

AND WHEREAS the previous sanction of the Government of India Act, 1915, to the passing of this Act:

It is hereby enacted as follows:—

1. (1) This Act may be called the Bihar and Orissa Primary Education Act, 1919. *Short title.*

(2) It extends to the whole of the Province of Bihar and Orissa *Extent.*

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) to "attend" a recognized primary school means to be present for instruction at such school on such days and at such time or times on each day as may be required by the school committee with the approval of the prescribed educational authority; *Definitions.*

(2) "child" means a boy who is not less than six and not more than ten years of age;

(3) "local authority" means

in an area constituted a Municipality under the Bengal Municipal Act, 1884¹, or under the Central Provinces Municipal Act, 1903,² the Municipal Commissioners, and

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Bihar and Orissa Gazette, 1918, Pt. V, p. 6; for Report of the Select Committee, see *ibid.*, pp. 30-31; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 49, 102, 238 and 477.

LOCAL EXTENT.—See s. 1(2). The application of this Act is barred in—
(i) the district of Angul by the Angul Laws Regulation, 1936 (Regulation V, of 1936), s. 3(2);
(ii) the district of Khondmals by the Khondmals Laws Regulation, 1936 (Regulation IV of 1936), s. 3(2).

2. Repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922).

3. Repealed by the Bihar and Orissa (Central Provinces Municipal) Repealing Act, 1924 (B. & O. Act I of 1924). The reference should now be taken to be made to the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922). See s. 3 of the former Act.

(Sec. 3)

in an area constituted a Union under section 38 of the Bengal Local Self-Government Act, 1885, the Union Committee of such Union subject to the control of the District Board [and in an area constituted a union under the Bihar and Orissa Village Administration Act, 1922, the Union Board of such Union, subject to the control of the District Board]¹; [and

in an area constituted a Union under Part II of the Sambalpur Local Self-Government Act, 1939, the Union Board of such Union subject to the control of the District Board]²;

(4) "parent" includes a guardian and any person who is liable to maintain or has the actual custody of a child;

(5) "prescribed" means prescribed by rules made by the [Provincial Government]³ under this Act;

(6) "primary education" means such instruction in reading, writing and arithmetic and other subjects (if any) as is for the time being recognized as such by the [Provincial Government]³;

(7) "recognized primary school" means a school in which primary education is given, and which is for the time being recognized by the prescribed educational authority;

(8) "school committee" means a committee constituted under section 4 of this Act.

Issue of
notification
declaring
primary
education of
children
compulsory.

3. (1) The local authority may by notification declare that from a date specified therein the primary education of children ordinarily residing in the area within its jurisdiction or in any portion of such area shall be compulsory.

(2) No such notification shall issue—

(a) unless it is resolved at a meeting of the members of the local authority that at least two-thirds of the members present at the meeting;

(b) unless the local authority has satisfied the [Provincial Government]³ that it is in a position to make and intends to make adequate provision in schools maintained or aided or to be provided and maintained or aided by it for primary education of all children for whom such education will become compulsory upon the issue of such notification;

(c) except with the previous sanction of the [Provincial Government]³.

1. Inserted by the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act III of 1922) s. 2(1) and Sch. I, printed post. This amendment applies only to unions in which provisions of Pt. IV of the said Act are in force.

2. Inserted by the Sambalpur Local Self-Government Act, 1939 (Orissa Act. VI of 1939), s. 3, Third Schedule.

3. Substituted by the A. O. for "L. G."

(Sects. 4-7)

in
offi
local authority may direct.

n (1) shall be published
shall be posted at the
places, if any, as the

4. (1) Where a notification under section 3 has issued in respect of any area, the local authority may appoint a school committee for the said area or separate school committees for separate portions of the said area in accordance with rules prescribed.

Appoint-
ment,
constitution
and func-
tions of
school
committee.

(2) Every school committee shall be constituted in such manner and for such period as may be prescribed.

(3) The school committee shall have to the extent prescribed the direction of education in, and the regulation of, primary schools in the area for which it is appointed and shall also enforce the provisions of this Act respecting the attendance at school and the employment of children.

5. Where a notification under section 3 is in force in any area, the parent of every child shall, in the absence of reasonable excuse as hereinafter provided, and if such child ordinarily resides in such area, cause such child to attend a recognized primary school in such area.

Duty of
parent to
cause
children to
attend
school.

6. A parent shall be deemed to have a reasonable excuse within the meaning of section 5 for failure to cause a child to attend a recognized primary school in any of the following cases :—

Meaning of
reasonable
excuse.

- (a) where the child is prevented from attending school on account of sickness, infirmity, domestic necessity, the seasonal needs of agriculture or other sufficient cause;
- (b) where the child is receiving, otherwise than in a recognized primary school, instruction which in the opinion of the school committee is efficient or has already completed his primary education;
- (c) where there is no recognized primary school within a distance of one mile by the nearest route from the residence of the child.

7. (1) Where the school committee is satisfied that a parent being bound under the provisions of section 5 to cause a child to attend a recognized primary school, has, after due warning by or at the instance of the school committee, failed to do so, the school committee may apply to the Magistrate for issuing such notice thereof to be given to the parent.

Issue of
attendance
order by
Magistrate.

(2) On the day fixed for the hearing of the application or on any subsequent day to which it may be adjourned, and after hearing the parent or at the discretion of the Magistrate any other person on his

1. Substituted by the A. O. for "Gazette."

(Sects. 8-12)

behalf, the Magistrate may pass an order directing the parent to cause such child to attend a recognized primary school on and from a date which shall be specified in the order.

Penalty for failure to obey attendance order.

8. (1) Any parent who fails without reasonable excuse to comply with an order under section 7 shall on conviction before a Magistrate be punished with fine which may on the first conviction extend to two rupees and on a subsequent conviction to ten rupees.

(2) No court shall take cognizance of an offence under sub-section (1), except on the complaint of the school committee.

Penalty for employing a child in contravention of the Act

9. (1) Whoever knowingly employs either on his own behalf or on behalf of any other person, any child to whom the provisions of section 5 apply, so as to interfere with the attendance of such child at a recognized primary school shall, on conviction before a Magistrate, be liable to fine which may extend to twenty-five rupees.

(2) No court shall take cognizance of an offence under sub-section (1) except on the complaint of the school committee and before making any complaint under sub-section (1) against any person, the school committee shall, unless such person has previously been convicted under sub-section (1) in respect of the same child, cause a warning to be given to such person.

School committee may authorize member to appear.

Exemption from compulsory education.

Education cess.

10. An application to a Magistrate under section 7 and a complaint to a Magistrate under section 8 or section 9 may be made on behalf of the school committee by such person as may be authorized by the committee in this behalf.

11. The [Provincial Government]¹ may of its own motion or on the application of the local authority by notification exempt the children of any class of persons or any community residing in the area or any specified part of the area under the control of the local authority from the operation of this Act or may direct the local authority to make such separate provision for the education of the children of such class of persons or such community as to the [Provincial Government]¹ may seem fit.

12. (1) If the resources, including grants from the [Provincial Government]¹, at the disposal of the local authority, are inadequate for the provision of efficient primary education for the children residing in the area in respect of which a notification under section 3 has issued, the local authority may, by a resolution passed at a general meeting specially called in this behalf and supported by at least two-thirds of the members present at such meeting and with the sanction of the [Provincial Government]¹, impose a cess to be called education cess:

Provided that no person shall be liable to pay such cess if the children of the class of persons or the community to which he belongs, have been exempted under the provisions of section 11 from the operation of this Act.

¹. Substituted by the A.O. for "L.G."

(Secs. 13-14)

(2) The proceeds of the education cess shall be applied by the local authority wholly to the provision of primary education under this Act and purposes connected therewith (including the provision of school accommodation) in the area from which the cess is recovered, and to the expenses of collecting the said cess.

13. Education cess shall—

- (i) in a municipality be such percentage not exceeding thirty-three and a third of the maximum tax or rate which can be imposed upon owners or occupiers of property in the said area under the provisions of section 85 of the Bengal Municipal Act, 1884¹, or of section 37 of the Central Provinces Municipal Act, 1903², as the local authority may fix, and shall be recoverable in the same manner as if it were such tax or rate;
- (ii) in a Union be such percentage not exceeding fifty of the assessment imposed under section 118C of the Bengal Local Self-Government Act, 1885, as the local authority may fix, and shall be recoverable in the same manner as if it were such assessment;
- ²[(iii) in a Union constituted under the Bihar and Orissa Village Administration Act, 1922, be such percentage not exceeding fifty of the assessment imposed under section 46 of that Act as the local authority may fix and shall be recoverable in the same manner as if it were such assessment];
- * [(iv) in a Union constituted under Part II of the Sambalpur Local Self-Government Act, 1939, be such percentage not exceeding 50 of the assessment imposed under section 176 (1) (a) of the Sambalpur Local Self-Government Act, 1939, as the Local Authority may fix and shall be recoverable in the same manner as if it were such assessment].

14. (1) The parent of every child attending a recognized primary school shall be liable to pay such fees as may be fixed by the local authority :

Liability to
pay school
fees.

1. Repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922).

2. Repealed by the Bihar and Orissa (Central Provinces Municipal) Repealing Act, 1924 (B. & O. Act I of 1924).

3. Inserted by s. 2(I) and Sch. I of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act III of 1922), printed post. This amendment applies only to unions in which the provisions of Pt. IV of the said Act are in force.

4. Inserted by the Sambalpur Local Self-Government Act, 1939 (Orissa, VI of 1939), s. 3, Third Schedule.

THE BIHAR AND ORISSA
PRIMARY EDUCATION ACT, 1910

[B. & O. Act
I of 1910]

(Sects. 15-18)

(2) In any area in which this Act is in force but no education cess has been imposed, the school committee may, upon being satisfied that the parent of a child is unable to pay the fees payable under sub-section (1), remit such fees wholly or in part during the whole or any part of the period of compulsory attendance.

15. All primary schools maintained by a local authority in any area in which this Act is in force shall be open to inspection by any officer appointed in this behalf by the [Provincial Government].

16. If the [Provincial Government]¹ is of opinion that a local authority has made default in any of the requirements of this Act, the [Provincial Government]¹ may by notification stating the grounds of such order cancel any notification which has been issued under section 3, or may make such other order as to the [Provincial Government]¹ may seem fit.

17. If the local authority does not appoint a school committee under the provision of this Act, the local authority shall itself exercise all the powers conferred and perform all the duties imposed by or under this Act upon a school committee so appointed.

18. (1) The [Provincial Government]¹ may by notification make rules² to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may—

(a) prescribe the educational authority referred to in section 2, sub-sections (1) and (7);

(b) determine generally what shall be considered to be adequate provision for primary education under section 3, sub-section (2) (b);

(c) prescribe the manner in which application shall be made for the sanction referred to in section 3, sub-section (2) (c), and the particulars to be furnished with such application;

(d) prescribe the manner in which the school committee shall be constituted, the number of members and the period of office of members of the school committee, its duties and powers in respect of the direction of education in, and the regulation of, primary schools, the manner in which it shall transact its business, its relations with the local authority and with the prescribed educational authority, and the circumstances in which separate school committees may be appointed for separate portions of an area in respect of which a notification under section 3 has issued.

1. Substituted by the A. O. for "L. G."

2. For rules made under this section, see B. & O. and Orissa L. S. R. & O., Vol. I, Pt. VII.

BIHAR AND ORISSA ACT I OF 1920
(THE BIHAR AND ORISSA MUNICIPAL SURVEY ACT, 1920)

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SECTIONS

1. Short title and extent
2. Definitions
3. Power to order survey and record
4. Appointment
5. Power to enter on land and to take all other requisite action
6. Power to issue notices
7. Power to summon witnesses, etc.
8. Preparation and draft publication of map and record
9. Disposal of objections
10. Final publication
11. Effect of entries in map and record
12. Service of notices
13. Contribution and survey fee
14. Penalty for failure to comply with notice
15. Power to make rules
16. Proceedings not to be affected by informality
17. *Repeal*

BIHAR AND ORISSA ACT I OF 1920

(THE BIHAR AND ORISSA MUNICIPAL SURVEY ACT, 1920)¹

(24th March, 1920)

An Act to make provision for the survey and record of land situated in municipalities in Bihar and Orissa.

Whereas it is expedient to make provision for the survey and record of land in municipalities in Bihar and Orissa :

And whereas the previous sanction of the Governor-General has been obtained under section 79 (2) of the Government of India Act, 1915, to the passing of this Act :

It is hereby enacted as follows :—

1. (1) This Act may be called the Bihar and Orissa Municipal Survey Act, 1920. Short title
and extent.

(2) It extends to the whole of the Province of Bihar and Orissa, including the Santal Parganas.

2. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(a) "land" includes anything attached to the earth or permanently fastened to anything attached to the earth;

(b) the expressions "municipality", "the Commissioners" and "owner" have the same respective meanings as in the Bengal Municipal Act, 1884², except when they relate to a municipality situated in the district of Sambalpur, in which case they have the same respective meanings as the expressions "municipality", "committee" and "owner" have in the Central Provinces Municipal Act, 1903³;

(c) "occupier" includes an owner in actual occupation of his own land or building;

(d) "prescribed" means prescribed by rules made under this Act;

Reasons. See the
Select Committee,
ibid., 1919, Pt. VI,

LOCAL EXTENT.—See s. 1 (2). The application of this Act is barred in—

(i) the district of Angul by the Angul Laws Regulation, 1938 (Regulation V of 1938), s. 3 (2).

(ii) the district of Khondmals by the Khondmals Laws Regulation, 1934 (Regulation IV of 1934), s. 3 (2).

2. Repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922).

3. Repealed by the Bihar and Orissa (Central Provinces Municipal) Repealing Act, 1924 (B. & O. Act I of 1924). The reference should now be taken to be made to the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922). See s. 3 of the former Act.

(Secs. 3-6)

(e) "survey" includes identification of boundaries and all other operations antecedent to or connected with survey.

Power to
order survey
and record.

3. (1) The [Provincial Government]¹ may, on the application of the Commissioners or of its own motion, order that a survey and record shall be made of any or all lands situate within a municipality

(2) Every such order shall be notified in the [Official Gazette], and shall be published locally in such manner and in such languages as the [Provincial Government]¹ may direct, and shall specify the particulars to be entered in the record.

Appoint-
ment.

4. (1) For the purpose of making such survey and record, the [Provincial Government]¹ shall appoint a Superintendent of Survey (hereinafter called the Superintendent), and may appoint one or more Assistant Superintendents of Survey.

(2) An Assistant Superintendent of Survey shall exercise such of the powers of a Superintendent as may be delegated to him by the Superintendent.

(3) The Superintendent and every officer employed in making the survey and record shall be deemed to be a public servant within the meaning of the Indian Penal Code.²

5. The Superintendent or any other officer employed as aforesaid may enter between the hours of sunrise and sunset on any land within or adjoining the municipality, and may cause boundary marks to be erected, and may make all enquiries and do all things which he considers necessary for the purpose of making the survey and record:

Provided that no such entry shall be made upon land which is occupied at the time, unless either the person in immediate occupation of the land has consented thereto or a notice of the intention to make such entry has been served in manner prescribed upon such person at least twenty-four hours before such entry.

6. Before entering on any land for the purpose of making a survey, or at any time during the progress of the survey, the Superintendent may by notice require the owner or the occupier of any land about to be surveyed and the owner or the occupier of any land, whether within or without the municipality, conterminous thereto,

- (a) to attend before himself or any officer employed in making the survey and record;
- (b) to point out the boundaries of the land;

1. Substituted by the A. O. for "L. G."

2. Substituted by *ibid* for "Gazette".

3. Sec. 21 of Act XLV of 1860.

Power to
issue
notices

- (c) to render aid in setting up or repairing boundary marks;
 - (d) to maintain and keep in repair any boundary mark erected under this Act till the survey has been completed;
 - (e) to produce any document or paper in his power relating to the land,
 - (f) to furnish all information and assistance necessary for carrying out the purposes of this Act;
- and such person shall be bound to attend personally or by agent at such places and times (not being less than three days after the service of the notice), and to do or cause to be done all things required by the notice.

7. The Superintendent and the Assistant Superintendents of Survey shall have power to summon witnesses and enforce their attendance and to compel the production of documents by the same means (so far as may be) and in the same manner as is provided in the case of a Court under the Code of Civil Procedure, 1908, when trying a suit, and any proceeding before any such officer shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.

8. The survey and record shall be prepared in the prescribed manner, the record shall include a map, a draft of the record shall be published in the prescribed manner and for the prescribed period, and a copy of such draft shall be deposited in the office of the Commissioners for the information of persons affected thereby and may there be inspected free of charge.

9. All objections which may be made within the prescribed period of publication to any entry in or to any omission from the record, shall be disposed of by such officer and in such manner, and subject to such appeal, if any, as may be prescribed:

Provided that the said officer shall, if the parties so desire, refer any such objection to arbitration, and such reference and arbitration shall be governed by rules prescribed, and until such rules have been prescribed, paragraphs I to 16, both inclusive, of the Second Schedule to the Code of Civil Procedure, 1908, shall, so far as may be, apply thereto.

10. (1) When all such objections have been disposed of, the Superintendent shall cause the record to be finally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly made under this Act.

(2) The [Provincial Government]² may by notification³ declare that the record has been finally published for any municipality, and such notification shall be conclusive evidence of such publication.

1. See now the Arbitration Act, 1910 (X of 1910).

2. Substituted by the A. O. for "L. G."

3. For a list of notifications under this sub-section, see the B. & O. Local Statutory Rules and Orders, Vol. I, pt. VII

Power to summon witnesses, etc.

Preparation and draft publication of map and record.

Disposal of objections.

Final publication.

THE BIHAR AND ORISSA

(Secs. 11-13)

[B. & O. A.]

Effect of
entries in
map and
record.

Service of
notices

Contribution
and survey
fee.

11. Every entry in the record finally published under section 10 shall be evidence of the matter referred to in such entry, and in any suit or proceeding to which the Commissioners are a party, shall be presumed to be correct until it is proved by evidence to be incorrect.

12. A notice under this Act, other than a notice referred to in section 5, may be served on any person—

(a) so far as may be, in the manner provided in the Criminal Procedure Code, 1898, for the service of a summons to compel appearance or a summons to produce, as the case may be; or

(b) by post.

13. (1) Notwithstanding anything in any law for the time being in force relating to municipalities, the Commissioners at a meeting may make such contribution as they think fit from the municipal fund towards the cost of making a survey and record under this Act.

(2) Whether or no the said Commissioners have made a contribution under sub-section (1), the [Provincial Government]¹ may, if it thinks fit, impose a survey fee on the owner or on the occupier or on the owner and the occupier of land surveyed under this Act, and such fee shall be determined as may be prescribed and shall be recoverable as a public demand:

Provided that—

(a) if the survey and record was ordered to be made on the application of the said Commissioners, the aggregate amount of the survey fees imposed shall not exceed half the total cost of making the survey and record;

(b) if the survey and record was ordered to be made otherwise than on such application, the aggregate amount of the survey fees imposed together with the contribution (if any) made under sub-section (1) of this section, shall not exceed half the total cost of making the survey and record;

(c) no survey fee shall be payable—

(i) by Government or out of the municipal fund,

(ii) by a person interested in land who would but for this provision be liable to pay a survey fee of less than a prescribed minimum amount;

(iii) in respect of any land comprised in a holding exempted from assessment under section 93 of the Bengal Municipal Act, 1884², or under the corresponding provision of any other law for the time being in force in the municipality.

1. Substituted by the A. O. for "L. G."

2. Repealed and re-enacted by the Bihar and Orissa Municipal Act, 1927 (B. & O. Act VII of 1922).

(3) every person who has paid the survey fee imposed under sub-section (2) shall be entitled to receive free of charge a certified extract from the record (including a certified extract from the map) relating to the land in respect of which the fee was imposed.

14. If any person fails to comply with a requisition contained in any notice duly served on him under section 6, the Superintendent may impose on him a fine not exceeding one hundred rupees, and such fine shall be recoverable as a public demand. Penalty for failure to comply with notice.

15. The [Provincial Government]¹ may, by rules made after previous publication², provide for— Power to make rules.

- (a) all matters by this Act required or expressly or impliedly authorized to be prescribed;
- (b) any other matter in respect of which, in the opinion of the [Provincial Government]¹, sufficient provision has not been made in this Act for carrying out the purposes thereof.

16. No proceedings under this Act shall be affected by reason of any informality, provided that the provisions of this Act be in substance and effect complied with. Proceedings not to be affected by informality.

17. Section 223A of the Bengal Municipal Act, 1884, is hereby repealed. Repeal.

1. Substituted by the A. O. for "L. G."

2. As to the procedure for previous publication, see s. 26 of the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act I of 1917), printed ante, p. 273.

BIHAR AND ORISSA ACT II OF 1920
 (THE BIHAR AND ORISSA PLACES OF PILGRIMAGE ACT, 1920)¹

SECTIONS

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THE SCHEDULE.

BIHAR AND ORISSA ACT II OF 1920

(THE BIHAR AND ORISSA PLACES OF PILGRIMAGE ACT, 1920)¹

(31st March, 1920)

An Act to make better provision for the control and sanitation of places of pilgrimage and for the regulation of houses therein in which pilgrims are accommodated.

Whereas it is expedient to make better provision for the control and sanitation of places of pilgrimage, and for the regulation of houses therein in which pilgrims are accommodated;

And whereas the previous sanction of the Governor-General has been obtained under section 79 (2) of the Government of India c. 61. Act, 1915, to the passing of this Act;

It is hereby enacted as follows :—

Preliminary

1. (1) This Act may be called the Bihar and Orissa Places of Pilgrimage Act, 1920.

Short title
and extent

(2) This section extends to the whole of the Province of Bihar and Orissa, including the Santal Parganas.

(3) The [Provincial Government]² may by notification³ extend all or any of the other provisions of this Act to any local area to or through which people go on pilgrimage.

2. In this Act, unless there is something repugnant in the Definitions subject or context,—

(1) "licensed house" means a house in respect of which a license for the accommodation of pilgrims has been granted under this Act and is in force;

(2) "Magistrate" means the District Magistrate, and includes any Magistrate of the first class specially empowered by the [Provincial Government]² to perform the functions of the Magistrate under this Act;

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Bihar and Orissa Gazette, 1919, Pt. V, p. 15; for Report of the Select Committee, see *ibid*, 1920, Pt. V, p. 47; and for Proceedings in Council see *ibid*, 1919, Pt. VI, p. 424, and *ibid*, 1920, Pt. VII, p. 38.

LOCAL EXTENT.—The application of this Act is barred in—

(i) the district of Angul by the Angul Laws Regulation, 1936 (Regulation V of 1936), s. 3 (2).

(ii) the district of Khondmals by the Khondmals Laws Regulation, 1936 (Regulation IV of 1936) s. 3 (2).

2. Substituted by the A. O. for "L. G."

3. For a list of areas to which this Act has been extended, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

(Secs. 5-7)

(3) "owner" means the person entitled to the immediate possession of any house, and includes the person who has obtained a license in respect of any house;

(4) "pilgrim" includes a person who visits a place of pilgrimage with the object, among others, of performing such rites as are usually performed by pilgrims;

(5) "prescribed" means prescribed by rules made by the [Provincial Government] under this Act.

Prohibition
of accommo-
dation of
pilgrims for
gain in
unlicensed
houses.

Application
for license.

Reference to
Medical
Officer of
Health.

Grant of
license.

Discretion to
grant tem-
porary or
provisional
license.

Licensed Houses

3. No person shall accommodate pilgrims for gain in any house not licensed.

4. (1) The owner of any house may apply to the Magistrate to license such house for the accommodation of pilgrims.

(2) Every such application shall be in writing in the prescribed form, and shall be accompanied by the prescribed fee for inspection of the house by the Medical Officer of Health.

5. The Magistrate shall forward the application to the Medical Officer of Health, who shall inspect the house and return the application to the Magistrate with a certificate in the prescribed form of the result of his inspection.

6. (1) If it appears to the Magistrate after considering the certificate of the Medical Officer of Health that the house satisfies the prescribed requirements, he may, on payment of the prescribed license-fee, license the house for the accommodation of such number of pilgrims, if any, as in his opinion the house is fit to accommodate, having regard to the number of persons stated in the application to be resident in the house as members of the family, and servants of the owner, or if the Magistrate considers that the number of persons so stated has been overstated or understated, to the number of persons likely in his opinion to be so resident at the time when the largest number of pilgrims is accommodated in the house.

(2) Every such license shall be in the prescribed form and subject to the prescribed conditions, and shall specify the date, not exceeding one year from the date of issue, up to which it is to remain in force.

7. The Magistrate may license any house for a period not exceeding one month at a reduced fee, and may also, in cases of urgency, if satisfied that sufficient accommodation cannot otherwise be provided for all the pilgrims visiting the town or place, provisionally license any house pending the result of the inspection of the Medical Officer of Health.

1. Substituted by the A. O. for "L. G."

(Secs. 8-12)

8. If the Magistrate is satisfied that any licensed house is unfit for the accommodation of pilgrims, or if the owner of any licensed house is convicted of any offence punishable under this Act, the Magistrate may revoke or suspend the license granted in respect of such house.

Revocation
or suspen-
sion of
license.

9. Whenever the Magistrate is satisfied that any licensed house is fit for the accommodation of a less number only of pilgrims than the number entered in the license, the Magistrate may modify such license by entering therein such less number :

Modification
of license.

Provided that if the change is not due to the fault of the licensee, the Magistrate shall refund to him such portion of the license-fee already paid as he deems just and reasonable in the circumstances of the case.

10. (1) The Magistrate or the Medical Officer of Health may at any time—

Powers of
entry and
inspection

- (a) enter and inspect any licensed house or any part thereof other than a zanana room ;
- (b) after giving the prescribed notice of his intention to do so, enter and inspect any zanana room in a licensed house.

Explanation.—The expression “zanana room” means any part of a house in the exclusive use and occupation of women who according to the custom and manners of the country ought not to be compelled to appear in public.

(2) The Magistrate may by order in writing—

- (a) authorize any officer not below the rank of a Sub-deputy Magistrate or Sub-deputy Collector to exercise the above powers ;
- (b) authorize any other person to exercise the above powers between the hours of 6 a. m. and 9 p. m.

(3) Every person so authorized shall be deemed to be a public servant within the meaning of the Indian Penal Code¹.

11. The Magistrate may by order exempt any licensed house or any part thereof from inspection for a period specified in the order, and may cancel or renew any such order.

Power to
exempt
licensed
house from
inspection.

Medical Officers of Health

12. The Commissioner may—

- (a) appoint² Medical Officers of Health to carry out the purposes of this Act ;

Power to
appoint
Medical
Officers of
Health and
sanction
establish-
ment.

1. See s. 21 of Act XLV of 1860.

2. See Orissa L. S. R. & O., Vol. I, Pt. VII.

THE BHAR AND ORISSA

[B. & O Ad]

(Sec. 3-5).

(3) "owner" means the person entitled to the immediate possession of any house, and includes the person who has obtained a license in respect of any house;

(4) "pilgrim" includes a person who visits a place of pilgrimage with the object, among others, of performing such rites as are usually performed by pilgrims;

(5) "prescribed" means prescribed by rules made by the [Provincial Government] under this Act.

Licensed Houses

3. No person shall accommodate pilgrims for gain in any house not licensed.

Prohibition
of accommo-
dation of
pilgrims for
gain in
unlicensed
houses.

Application
for license.

Reference to
Medical
Officer of
Health.

Grant of
license.

4. (1) The owner of any house may apply to the Magistrate to license such house for the accommodation of pilgrims.

(2) Every such application shall be in writing in the prescribed form, and shall be accompanied by the prescribed fee for inspection of the house by the Medical Officer of Health.

5. The Magistrate shall forward the application to the Medical Officer of Health, who shall inspect the house and return the application to the Magistrate with a certificate in the prescribed form of the result of his inspection.

6. (1) If it appears to the Magistrate after considering the certificate of the Medical Officer of Health that the house satisfies the prescribed requirements, he may, on payment of the prescribed license-fee, license the house for the accommodation of such number of pilgrims, if any, as in his opinion the house is fit to accommodate, having regard to the number of persons stated in the application to be resident in the house as members of the family, and servants of the owner, or if the Magistrate considers that the number of persons so stated has been overstated or understated, to the number of persons likely in his opinion to be so resident at the time when the largest number of pilgrims is accommodated in the house.

(2) Every such license shall be in the prescribed form and subject to the prescribed conditions, and shall specify the date, not exceeding one year from the date of issue, up to which it is to remain in force.

7. The Magistrate may license any house for a period not exceeding one month at a reduced fee, and may also, in cases of urgency, if satisfied that sufficient accommodation cannot otherwise be provided for all the pilgrims visiting the town or place, provisionally license any house pending the result of the inspection of the Medical Officer of Health.

1. Substituted by the A. O. for "L. G."

Discretion to
grant tem-
porary or
provisional
license.

(Secs. 8-12)

8. If the Magistrate is satisfied that any licensed house is unfit for the accommodation of pilgrims, or if the owner of any licensed house is convicted of any offence punishable under this Act, the Magistrate may revoke or suspend the license granted in respect of such house.

9. Whenever the Magistrate is satisfied that any licensed house is fit for the accommodation of a less number only of pilgrims than the number entered in the license, the Magistrate may modify such license by entering therein such less number:

Provided that if the change is not due to the fault of the licensee, the Magistrate shall refund to him such portion of the license-fee already paid as he deems just and reasonable in the circumstances of the case.

10. (1) The Magistrate or the Medical Officer of Health may at any time—
 (a) enter and inspect any licensed house or any part thereof other than a zanana room ;
 (b) after giving the prescribed notice of his intention to do so, enter and inspect any zanana room in a licensed house.

Explanation.—The expression "zanana room" means any part of a house in the exclusive use and occupation of women who according to the custom and manners of the country ought not to be compelled to appear in public.

(2) The Magistrate may by order in writing—

(a) authorize any officer not below the rank of a Sub-deputy Magistrate or Sub-deputy Collector to exercise the above powers ;
 (b) authorize any other person to exercise the above powers between the hours of 6 a. m. and 9 p. m.

(3) Every person so authorized shall be deemed to be a public servant within the meaning of the Indian Penal Code¹.

11. The Magistrate may by order exempt any licensed house or any part thereof from inspection for a period specified in the order, and may cancel or renew any such order.

Medical Officers of Health

12. The Commissioner may—

(a) appoint² Medical Officers of Health to carry out the purposes of this Act ;

1. See s. 21 of Act XLV of 1860

2. See Orissa L. S. R. & O., Vol. I, Pt. VII.

Revocation or suspension of license

Modification of license.

Powers of entry and inspection.

Power to exempt licensed house from inspection.

Power to appoint Medical Officers of Health and on

THE BIHAR AND ORISSA
 (Secs. 13-16)

[B. & O. A.]

Power to
 impose
 terminal
 tax

(b) sanction the entertainment of such establishment as he may deem necessary for the purposes of this Act.

Terminal Tax on Passengers

13. The [Provincial Government] may impose a terminal tax on passengers of one or more of the following classes, namely:—
 (a) passengers brought by railway to any railway station—
 (b) passengers taken by railway from any railway station—
 (c) passengers brought by steam vessel to any landing place—
 (d) passengers taken by steam vessel from any landing place—in or near a place of pilgrimage:

Provided that no terminal tax shall be imposed on passengers of class (a) or class (b) [after the commencement of Part III of the Government of India Act, 1935, which was not lawfully being imposed immediately before that date, and any tax so imposed on passengers of those classes shall only be leviable until provision to the contrary is made by the Central Legislature].

Penalties

14. If any pilgrim is accommodated for gain in a house other than a licensed house, the owner of the house shall be liable for every pilgrim so accommodated to a fine not exceeding rupees five for every day or night during any part of which such pilgrim was accommodated in the house.

15. When a license in respect of any house has been revoked or suspended, if there is resident in such house any person other than a member of the family or a servant in the actual employ of the owner, the owner shall be liable to a fine not exceeding Rs. 5 for each person so found.

16. If there is at any time resident in a licensed house a number of persons in excess of the authorized number, the owner of the house shall be liable to a fine not exceeding five rupees for each person so found in excess.

Explanation.—In this section the expression “authorized number” means the total arrived at by adding the number of pilgrims entered in the license, to the number of residents to which regard was had under the provisions of sub-section (1) of section 6.

¹ Substituted by the A. O. for “L. G.”

² For a list of notifications under this section, see Bihar and Orissa L. S. R. & O., Vol. I, Pt. VII.

³ Substituted by the A. O. for “without the sanction of the G. G. in C.”

(Sects. 17-20)

^{17.} If the conditions entered on a license granted in respect of a licensed house are contravened in any manner for which no penalty is provided by this Act and the rules made thereunder, the owner of the house shall be liable to a fine not exceeding Rs. 20.

^{18.} If the owner of a licensed house is absent therefrom, leaving it in charge of any other person, then such other person as well as the owner shall be liable to any penalty which may under this Act be imposed for any offence in respect of such house.

^{19.} Where any person is required to perform any work of or connected with conservancy or sanitation, and such person fails to perform such work within eight days after being served with a notice in that behalf, the Magistrate may cause such work to be performed and may recover the cost from such person as if it were a fine:

Provided that in case of urgency where immediate remedy is in the opinion of the Magistrate essentially necessary, he may cause such work to be performed at any time after the issue of the notice, and may recover the cost as aforesaid:

Provided that this section shall not apply to an area which is a municipality within the meaning of the Bengal Municipal Act, 1884.

The Lodging-house Fund

^{20. (1)} In every area to which this Act applies, there shall be constituted a fund, to be called the "Lodging-house Fund", and there shall be placed to the credit thereof in the District Treasury or in a Sub-Treasury, for in any bank or branch bank used as a Government treasury, in or near the area;—

(a) all sums levied and recovered within such area as fees, or penalties¹;

(b) all sums which may be allotted to the Fund from provincial revenues by the Provincial Government², or directed by the Provincial Government³ to be credited to the Fund; and

(c) the net proceeds of the terminal tax, if any, imposed under section 13:

1. Repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 & O. Act VII of 1922.

2. Inserted by the Bihar and Orissa Places of Pilgrimage (Amendment) 1931 (B & O. Act II of 1931), s. 2(a).

3. The words "fines, penalties" omitted by the A. O.

4. Inserted by ibid.

5. Substituted by ibid for "L. G."

Penalty &
contravention of
conditions of
license.

Liability
of persons in
charge of
licensed
houses in
absence of
owner,
Power to
perform
work of
which notice
is given.

The Lodg.
ing-house
Fund.

THE BIHAR AND ORISSA

(Secs. 21-23)

(B & O Act)

¹ Provided that a committee appointed under sub-section (3) may, with the previous sanction of the [Provincial Government], invest any moneys not required for immediate use either in Government securities or in any other form of security of which the [Provincial Government]² may approve.]

(2) The [Provincial Government]² may appoint any person or a committee to administer, in accordance with the provisions of this Act, the Lodging-house Fund constituted for any area :

Provided that in any area where the Bengal Municipal Act, ^{Be} 1884³ is in force, the fund shall be administered by a committee, at least one-third of whose number shall be elected by the Commissioners of the municipality for that area and the remainder shall be elected or nominated in such manner as the [Provincial Government]⁴ may prescribe.

21 The Lodging-house Fund shall be applied as the Commissioner may direct—

(a) to the payment of the salaries of Medical Officer of Health appointed and of establishment entertained in accordance with the provisions of section 12, and pensions and gratuities, and of contributions to a provident or annuity fund;

(b) to the provision of medical relief in the area for which the fund is constituted, and to the sanitary improvement and conservancy of the said area and of any place, building or road which is or may be regulated by rules made under this Act

Miscellaneous

22. (1) For the purposes of section 80 of the Code of Civil Procedure, 1908, the Magistrate, the Medical Officer of Health and every person acting under his or their direction shall be deemed to be a public officer.

(2) A suit or proceeding against any such person for anything done or professing or purporting to be done under this Act shall not be instituted after three months from the date of accrual of the cause of action.

23. (1) The [Provincial Government]² may after previous publication, make rules⁵ for carrying out the purposes of this Act:

1. Inserted by the Bihar and Orissa Places of Pilgrimage (Amendment) Act, 1931 (B & O. Act II of 1931), s. 2 (b).

2. Substituted by the A. O. for "L. G."

3. Repeated and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922).

4. As to the procedure for previous publication, see s. 20 of the B. & O. General Clauses Act, 1917 (B. & O. Act I of 1917), p. 242 ante.

5. For rules made under this sub-section, see Bihar & Orissa L. S. R. & O. Vol. I, Pt. VII.

Suits against officers.

Power to make rules.

(Sec. 23)

Provided that without the previous sanction of the [Federal Railway Authority]¹ no railway company or administration [operating a railway which is a Federal Railway within the meaning of the Government of India Act, 1935]² shall by such rules be called upon to collect a terminal tax.

(2) In particular and without prejudice to the generality of the foregoing power, the [Provincial Government]³ may by such rules⁴—

- (a) provide for every matter by this Act directed or expressly or impliedly authorized to be prescribed;
- (b) prescribe the authority which may require a person to perform a work of or connected with conservancy or sanitation, or to perform such a work of any specified class;
- (c) prescribe the manner of service of any notice or order under this Act or any rule made thereunder;
- (d) subject to the proviso to sub-section (1), prescribe the manner in which the terminal tax shall be collected;
- (e) prescribe registers, forms and returns;
- (f) provide for the grant of pensions and gratuities to the Medical Officer of Health and to the members of the establishment entertained under section 12;
- (g) provide for the creation and management of a provident fund or annuity fund, for compelling contributions thereto on the part of members of the said establishment and for supplementing such contributions out of the Lodging-house Fund;
- (h) regulate the encampments, lodging and halting-places, sarais and dharmsalas used by pilgrims in any place of pilgrimage, or on their journey thereto or therefrom;
- (i) prescribe measures to be taken for preventing the outbreak or spread of any epidemic disease;
- (j) in any area not being a municipality or part of a municipality, provide for all or any matters of or connected with conservancy, sanitation and medical relief.

(3) The [Provincial Government]³ may in making any rule under this section direct that the breach thereof shall be punishable with fine not exceeding fifty rupees, and in case of a continuing offence, a further fine not exceeding twenty rupees for each day after written notice of the offence from the Magistrate.

1. Substituted by the A. O. for "G. of I."

2. Inserted by *ibid*.

3. Substituted by *ibid* for "L. G."

4. For rules made under this sub-section, see Bihar & Orissa L. S. R. & O., Vol. I, Pt. VII.

THE BIHAR AND ORISSA
PLACES OF PILGRIMAGE ACT, 1920

[B. & O. A.
II of 1920]

(Schedule)

Repeals.

Repeals

24. The enactments specified in the schedule, so far as they
are in force in Bihar and Orissa, are hereby repealed.

THE SCHEDULE
ENACTMENTS REPEALED

(See section 24)

Acts of the Lieutenant-Governor of Bengal

Year	No.	Short title
1	2	
1871		
1879	4	The Puri Lodging-house Act.
1884	2	The Puri Lodging-house (Exten- sion) Act.
1908	1	Ditto
	3	The Puri Lodging-house (Amend- ment) Act.

BIHAR AND ORISSA ACT IV OF 1920

(THE BIHAR AND ORISSA MINING SETTLEMENTS ACT, 1920)

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*THE BENGAL AND ORISSA
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{B. & O. Act
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SECTIONS

- 22. Appeal from orders under section 19 (3) or 20
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- 27. Prosecution of landholder, owner, etc,
- 28. Limitation of prosecutions
- 29. Cognizance of offences
- 30. Power of Board for obtaining evidence
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- 32. Power of Provincial Government to alter or rescind orders

BHAR AND ORISSA ACT IV OF 1920

(THE BHAR AND ORISSA MINING SETTLEMENTS ACT, 1920)¹

(22nd September, 1920)

An Act to amend and re-enact the law relating to the control and sanitation of Mining Settlements in the Province of Bihar and Orissa.

WHEREAS it is necessary to amend and re-enact the law relating to the control and sanitation of Mining Settlements in Bihar and Orissa, and to make better provision for preventing the outbreak and spread in such settlements of epidemic disease;

AND whereas the previous sanction of the Governor-General has been obtained under section 70 (2) of the Government of India Act, 1915, to the passing of this Act;

It is hereby enacted as follows :—

PRELIMINARY

1. (1) This Act may be called the Bihar and Orissa Mining Settlements Act, 1920. Short title and extent.

(2) It extends to the whole Province of Bihar and Orissa including the Santal Parganas.

2. (1) The Bengal Mining Settlements Act, 1912², so far as it applies to Bihar and Orissa, is hereby repealed. Repeal of Bengal Act II of 1912.

(2) But any Mining Settlement declared, Mines Board of Health appointed, limits defined, appointment, rule or order made, notification or notice issued, fees imposed or assessed, contract entered into or suit instituted under the said Act, shall, so far as may be, be deemed to have been respectively declared, appointed, defined, made, issued, imposed or assessed, entered into or instituted under this Act.

3. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) the expressions "agent", "employed", "mine" and "owner" have the same meanings as in section 3 of the Indian Mines Act, 1901³;

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the B. & O. Gazette, 1920, Pt. V, p. 103; for Report of the Select Committee, see *ibid.*, p. 114 and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 291 and 355.

LOCAL EXTENT.—See s. 1 (2). The application of this Act is barred in—

(i) the district of Angul by the Angul Laws Regulation, 1930 (Regulation V of 1930), s. 3 (2).

(ii) the district of Khondmals by the Khondmals Laws Regulation, 1936 (Regulation IV of 1936) s. 3 (2).

2. Printed in Bengal Code, 1939, Vol. III, p. 375.

3. Repealed and re-enacted by the Indian Mines Act, 1923 (IV of 1923), printed in Central Acts, Vol. VII, p. 387.

THE BIHAR AND ORISSA

[B. & O. Act]

(Sects. 4-5)

(b) "Board" means a Mines Board of Health established under this Act;

(c) "Landholder" means a proprietor, permanent tenure holder, rent-free holder, or holder of a maintenance grant, holding land within a Mining Settlement;

(d) "prescribed" means prescribed by the [Provincial Government]¹ by rules under this Act.

Declaration
of area as
Mining
Settlement.

DECLARATION OF A MINING SETTLEMENT

4. [(1) Whenever it appears to the [Provincial Government]¹ that it is necessary to provide for the control and sanitation of any area within which persons employed in a mine reside and for the prevention in such area of the outbreak and spread of epidemic disease, the [Provincial Government]¹ may, by notification, published in the [Official Gazette]² and in such other manner, if any, as it may determine, intimate its intention to declare such area to be a Mining Settlement for the purposes of this Act].

(2) The [Provincial Government]¹ shall consider any objection or suggestion in regard to the intended declaration which may be submitted to it in writing by any person within a period to be specified in this behalf in the notification issued under sub-section (1), and may then, by notification, declare the said area, or any portion thereof, to be, for the purposes of this Act, a Mining Settlement.]

(3) Every notification issued under this section shall define the limits of the area to which it relates.

[(4) The [Provincial Government]¹ may, by like notification, include or exclude any area in or from a Mining Settlement.]

THE MINES BOARD OF HEALTH

5. (1) The [Provincial Government]¹ may, by notification, establish a Board, to be called a Mines Board of Health, for carrying out the purposes of this Act in any Mining Settlement specified in such notification.

(2) The said Board shall, by the name of the Mines Board of Health of the area by reference to which the Mining Settlement is known, be a body corporate and shall have perpetual succession and a common seal with power to hold and acquire property, both movable and immovable, and, subject to such restrictions as may be prescribed,

1. Substituted by the A. O. for "L. G."

2. For an instance of a notification under this sub-section, see the Bihar and Orissa L. S. R. & O., Vol I, Pt. VII

3. Substituted by the A. O. for "Gazette"

4. For a list of areas excluded from mining settlements under this sub-section, see the Bihar and Orissa L. S. R. & O., Vol I, Pt. VII

(Secs. 6-9)

to transfer any such property held by it and to do all other things necessary for the purposes of this Act, and may sue and be sued in its corporate name.

6. (1) The Board shall consist not less than seven nor more than eleven members of whom—

Constitution
of the
Board.

(i) two or such larger number, not exceeding four, as the [Provincial Government]¹ may determine, shall be elected by owners of mines within the Mining Settlement or their representatives;

(ii) one shall be elected by persons who receive royalties, rents or fines from mines within the Mining Settlement;

(iii) two shall be non-officials selected by the [Provincial Government]¹;

(iv) two or such larger number, not exceeding four, as the [Provincial Government]¹ may determine, shall be officials nominated by the [Provincial Government]¹.

(2) The election of members under this section shall be made in such manner and within such period as may be prescribed.

(3) If any of the electoral bodies mentioned in sub-section (1) does not, within the prescribed period, elect a person to be a member of the Board, the [Provincial Government]¹ shall nominate a member in his place; and the person so nominated shall be deemed to be a member as if he had been duly elected by such body.

(4) No act done by the Board, or by any of its officers, shall be deemed to be invalid merely by reason of any vacancy among any class of members or by reason of the total number of members being less than that fixed under sub-section (1) of this section.

7. (1) The Chairman of the Board shall be appointed by the [Provincial Government]¹ from among the members of the Board.

Chairman
and Vice-
Chairman.

(2) The Vice-Chairman shall be elected by and from the members of the Board.

8. The Chairman may, for the transaction of business connected with this Act or for the purpose of making any order authorized thereby, exercise such of the powers vested by this Act in the Board as may, subject to the prescribed restrictions (if any), be delegated to him by the Board.

Powers of
Chairman.

9. The Chairman may, subject to the prescribed restrictions, by written order, delegate to the Vice-Chairman or any officer of the Board all or any part of the powers so delegated by this Act or by written order,

Delegation
of powers to
Vice-Chair-
man, etc.

1. Substituted by the A. O. for "L. G."

THE BIHAR AND ORISSA

(B. & O. A.)

(Secs. 10-11)

Provided that nothing done by the Vice-Chairman, which might have been done under the authority of a written order from the Chairman, shall be invalid for want of, or for any defect in, such written order, if it be done with the express or implied consent of the Chairman previously or subsequently obtained.

THE MINING SETTLEMENT FUND

The Mining
Settlement
Fund

10. For every Mining Settlement there shall be formed a fund to be called "The Mining Settlement Fund" of the area by reference to which the Mining Settlement is known. This fund shall be vested in the Board, and there shall be placed to the credit thereof in District or Subdivisional Treasury [or in any bank or branch bank used as a Government Treasury]—

- (a) all sums charged by the Board under the provisions of this Act to and recovered from landholders, owners of mines or receivers of royalties, rents or fines from mines;
- (b) all sums allotted to the Board from the Provincial Revenues by the [Provincial Government]¹, and all sums borrowed by the Board under the Local Authorities Loans Act, 1914², for the purpose of carrying out the provisions of this Act;
- (c) all grants received from any Local Authority, Association or private persons;
- (d) all sums realized as costs, fees, * * * or otherwise under this Act or rules or by-laws framed thereunder [not being fines or penalties]³.

11. The Mining Settlement Fund shall be applicable to the following objects and in the following order:—

- (1) to the payment of any sums which the Board may be liable to pay as interest upon loans, and to the repayment of the principal of such loans;
- (2) to the payment of the salaries of the Medical Officers of Health and of the establishment employed by the Board;
- (3) to the payment of contributions to a provident or annuity fund for the Medical Officers of Health and for the establishment employed by the Board;

¹ Inserted by the Bihar and Orissa Mining Settlements (Amendment) Act 1925 (B. & O. Act IV of 1923), s. 2.
² Substituted by the A. O. for "L. G."
³ Printed in Central Acts, Vol. VI, p. 495.
⁴ The words "fines, penalties" omitted by the A. O.
⁵ Inserted by s. 2.

(Secs. 12-14)

- (4) to the payment of travelling allowances to members of the Board and to its officers and servants;
- (5) to the payment of the cost of audit; and
- (6) to the payment of expenses incurred by the Board for the purposes of this Act and the rules and by-laws made thereunder.

ESTABLISHMENTS

12. The Board may, save as provided in section 14 and subject to such restrictions as may be prescribed, determine and appoint the establishment to be employed by it, and fix the salaries to be paid to the members of such establishments

Establishments.

13. (1) The Board may, with the sanction of the Commissioner and subject to the control of the [Provincial Government]¹, make rules—

Powers to make rules for pensions etc.

- (a) for the granting of pensions and gratuities out of the Mining Settlement Fund; or
- (b) for the creation and management of a provident or annuity fund, for compelling contribution thereto on the part of its officers and servants, and for supplementing such contribution out of the Mining Settlement Fund.

(2) The Board may, in accordance with such rules,—

- (i) grant pensions or gratuities, or grant allowances or annuities out of such provident or annuity fund to any of its officers or servants, as it may see fit;
- (ii) if it thinks fit, grant a pension or gratuity to any member of the family of any of its officers or servants who has died from any disease contracted, or injury suffered, in the discharge of a duty which was attended with extraordinary bodily risk.

SANITARY OFFICERS

14. (1) The [Provincial Government]¹ may appoint for any Mining Settlement or any part thereof so many Medical Officers of Health as it may consider necessary, and shall fix the salary to be paid by the Board to each such Officer.

Appointment of Medical Officers of Health and Sanitary Inspectors

(2) The Board may appoint for the Mining Settlement or any part thereof as many Sanitary Inspectors as it may consider necessary.

(3) Every Medical Officer of Health and Sanitary Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

¹. Substituted by the A. O. for "L. G."

Their powers
and duties

(Secs. 15-17)

15. (1) Every Medical Officer of Health shall be subordinate to the Board of the Mining Settlement and shall, within the area for which he has been appointed, exercise the powers conferred on him and perform the duties imposed upon him by this Act and the rules framed thereunder, and, subject to the control of the Board, such other powers and duties consistent with the objects of this Act as the [Provincial Government] may, by general or special order, direct, or as may be delegated to him by the Board.

(2) Every Sanitary Inspector shall be subordinate to the Medical Officer of Health, and shall perform such duties and exercise such power as may be prescribed, or as may be delegated to him by the Medical Officer of Health with the consent of the Board.

(3) Every Medical Officer of Health or Sanitary Inspector may, within the Mining Settlement or part thereof for which he has been appointed,—

- (a) make such inquiries as he may think fit in order to ascertain whether the provisions of this Act and of the rules and orders made thereunder are observed;
- (b) enter, with such assistants (if any) as he may think fit, and inspect such Settlement or part thereof at all reasonable times by day or by night;
- (c) make inquiries respecting the sanitary condition of such Settlement or part thereof and the sufficiency of the rules for the time being in force therein; and
- (d) do all things necessary for the due discharge of the duties imposed upon him by or under this Act.

DUTIES OF LANDHOLDERS AND OF OWNERS, AGENTS AND MANAGERS OF MINES

16. Every owner of a mine within a Mining Settlement shall provide for labourers employed in the mine such house-accommodation, water-supply and sanitary arrangements and medical assistance as the Board may, by by-law, require.

17. Every owner, agent and manager of a mine in which are employed persons residing in any Mining Settlement, and every person holding or occupying land within such Settlement shall furnish the Medical Officer of Health or Sanitary Inspector, on requisition, with all reasonable facilities for entering upon any premises or land and making any inspection, examination or inquiry under this Act in relation to the sanitary condition of such Settlement.

¹. Substituted by the A. O. for "L. G."

Mine-owner
to provide
houses,
accommoda-
tion, etc.,
for
labourers.

Facilities to
be afforded
to Medical
Officers of
Health and
Sanitary
Inspectors.

(Secs. 18-19)

POWERS AND PROCEDURE OF THE BOARD

18. Subject to the prescribed restrictions, the Board may undertake such measures as it considers necessary, on the recommendation of the Medical Officer of Health or otherwise,—

- (i) to provide for the supply of wholesome water;
- (ii) to provide for sanitation, drainage or conservancy;
- (iii) to provide for and regulate the housing of residents, whether permanent or temporary;
- (iv) to prevent the outbreak and spread of epidemic disease;
- (v) to provide for the proper treatment of the sick, the establishment and maintenance of hospitals and dispensaries, and the entertainment of a medical staff;
- (vi) generally to carry out the purposes of this Act.

19. (1) If the Board is satisfied that it is necessary that measures should be taken for any of the purposes specified in section 18 in any part of the Mining Settlement, and that the necessity for such measures is distinctly referable to any act or omission in respect of his property on the part of the owner of any mine in which are employed persons resident in the Mining Settlement, the Board may, by a notice specifying the measures to be taken, require such owner at his own cost—

- (i) to execute, within a period to be fixed in the notice, all works which the Board may consider necessary for carrying such measures into effect, and to maintain in good repair all works so executed;
- (ii) to carry on such continuous or periodical operations as the Board may direct, for carrying such measures into effect.

(2) If the Board is satisfied that in order to prevent or abate a nuisance affecting the public health it is necessary that any landholder or owner of house-property in any part of the Mining Settlement should take certain order with any property belonging to him or in his possession or under his management, the Board may by notice require such person to take such order at his own cost.

(3) If in any of the cases referred to in the two foregoing subsections the Board is satisfied that immediate remedy is necessary, the Board may, for reasons to be recorded, by a notice specifying the measures to be taken and the estimated cost thereof (if any), declare its intention of itself executing and maintaining any such work or carrying on any such operations or taking such order at the cost of such owner, landholder or owner of house-property.

Power to execute measures

Power to require owner of mine and others to execute measures

(Sec. 20-23)

(B. & O. Ad.)

Objection
against re-
quisition.Power to
execute
work on
default of
ownerAppeal from
orders under
section 19
(3) or 20.Imposition
of assess-
ment.

20. Any person who is required by a notice under sub-section (1) or (2) of section 19 to do anything may prefer an objection in writing to the Board within five days from the date of service of the notice, and the Board shall, after considering the objection, record an order withdrawing, modifying or making absolute the requisition against which the objection is preferred; or substituting for such requisition a declaration under sub-section (3) of section 19, if the Board, for reasons to be recorded, is satisfied that immediate remedy is necessary.

21. If any work required by a notice under sub-section (1) of section 19 be not executed, or if the order required to be taken under sub-section (2) of section 19 be not taken, to the satisfaction of the Board, within the period fixed by the notice or within such further period (if any) as may be allowed by the Board, or if any work executed in pursuance of a notice under sub-section (1) of section 19 be not maintained in repair to the satisfaction of the Board, or if any operations required by any such notice be not carried on to the satisfaction of the Board, or, in any case in which a declaration has been made under sub-section (3) of section 19, the Board may cause such work or operations to be carried out or such order to be taken or repairs effected, and the cost therein incurred shall be recoverable from the defaulter as a public demand.

22. Any person aggrieved by an order passed under section 20 or by a declaration under sub-section (3) of section 19 may appeal to the Commissioner within thirty days from the date of such order or declaration:

Provided that the filing of such an appeal shall not operate, unless the Commissioner so directs, to stay any action by the Board during the pendency of the appeal.

23. (1) The Board shall impose yearly an assessment at rates not exceeding the maximum rates prescribed on—
(a) all owners of mines in which are employed persons residing in the Mining Settlement; and
(b) all persons who receive any royalty, rent or fine from such mines.

(2) The amount of the assessment shall be such amount as the Board considers likely to be sufficient, together with the other amounts estimated to be received to the credit of the Mining Settlement Fund, to meet the expenditure to be incurred by the Board under this Act.

(3) The assessment shall be based—
(i) in the case of owners of mines, on the annual output from their mines; and
(ii) in the case of the receivers of any royalty, rent or fine, or the local cess payable by such persons.

(4) The assessment imposed on every such owner or person shall be recoverable as a public demand.

MISCELLANEOUS

^{Power to make rules.} 24. (1) The [Provincial Government]² may, by notification, and after previous publications³, make rules for carrying out the purposes and objects of this Act in respect of any Mining Settlement or any group or class of Mining Settlements.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may—
- (a) regulate elections under sub-section (1) of section 6 and sub-section (2) of section 7, and prescribe the tenure of office of members of the Board;
 - (b) regulate the powers and procedure of the Board, the delegation to, and exercise by, the Chairman of powers vested in the Board, and the delegation by the Chairman of his powers and functions to the Vice-Chairman or any officer of the Board;
 - (c) regulate the appointment, suspension, dismissal, leave, salaries and allowances of the establishment employed by the Board;
 - (d) regulate the powers and duties of Medical Officers of Health and Sanitary Inspectors and provide for appeals from their orders;
 - (e) limit the rates at which assessment may be imposed by the Board;
 - (f) regulate all expenditure to be incurred by the Board and the methods under which sums due to it may be calculated and recovered;
 - (g) regulate the custody of the Mining Settlement Fund, the keeping and audit of accounts and the preparation and submission of estimates.

25. (1) The Board may, after previous publications make by laws consistent with this Act,—

- (i) prescribing the duties of owners, agents and managers of mines in respect of the Mining Settlement, and of all persons acting under them;
- (ii) prescribing the matters in respect of which notices, returns and reports shall be furnished by owners, agents and managers of mines, the form of such notices, returns and reports, the persons and authorities to whom they are to be furnished, and the

^{1.} For rules under this section, see the Bihar and Orissa L. S. R. & O., Vol. I, Pt. VII.

^{2.} Substituted by the A. O. for "L. G."

^{3.} As to previous publication, see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act I of 1917), s. 26, printed on p. 273 *onta*.

(Sec. 26)

- particulars to be contained in them;
- (iii) prescribing the plans (if any) to be kept by owners, agents and managers of mines within the Mining Settlement and the manner and places in which they are to be kept for purposes of record;
- (iv) providing for the supply of filtered, boiled or other water and for sanitation and conservancy in the Mining Settlement;
- (v) providing for the taking of measures to prevent the outbreak or spread of dangerous epidemic disease in the Mining Settlement;
- (vi) providing against the accumulation of water (other than water in mines) in the Mining Settlement;
- (vii) regulating the construction and sanitation of houses for the accommodation of persons employed in mines within the Mining Settlement;
- (viii) securing the decent lodging and accommodation of persons employed in mines within the Mining Settlement;
- (ix) prescribing the medical assistance to be provided by the owners of mines within the Mining Settlement for the labourers employed under them;
- (x) providing for the prevention or abatement of nuisance affecting the public health committed by any persons within the limits of the Mining Settlement;
- (xi) generally for carrying out the purposes of this Act and for promoting the safety, health and welfare of persons employed in mines within the Mining Settlement.
- ¹[(2) By-laws made under this section shall not take effect until they have been confirmed by the [Provincial Government]² and published in the [Official Gazette]³.]

Penalties for
offences

26. (1) Whoever obstructs any Medical Officer of Health or Sanitary Inspector in the discharge of his duties under this Act or the rules framed thereunder, or refuses or wilfully neglects to furnish him with the means necessary for making any entry, inspection, examination or inquiry thereunder in relation to any Mining Settlement, or withholds any information necessary for the purposes of such inquiry, shall be punishable with imprisonment for a term which may extend to three months, or with both, or with fine which may extend to five hundred rupees.

(Secs. 27-32)

shall be punishable with fine which may extend to five hundred rupees.

(3) Whoever—

- (a) fails to comply with any requisition or order made under any provision of this Act or of any rule, by-law or order made thereunder; or
- (b) contravenes any provision of this Act or any rule, by-law or order thereunder, for the breach of which no penalty is otherwise provided,

shall be punishable with fine which may extend to two hundred rupees, and in the case of a continuing breach under clause (a) of this sub-section, with a further fine which may extend to fifty rupees for every day during which the breach is proved to have been persisted in after the date of the receipt by him of the requisition or order referred to in that clause.

27. No prosecution shall be instituted against any owner, agent or manager of a mine or the holder of any land within a Mining Settlement, for any offence against this Act or any rule, by-law or order made thereunder, except at the instance of the Board.

Prosecution
of land-
holder,
owner, etc.

28. No Court shall take cognizance of any offence against this Act or any rule, by-law or order thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Limitation
of prosecu-
tions.

29. No Court inferior to that of a Magistrate of the first class or Subdivisional Magistrate shall try any offence against this Act or any rule, by-law or order thereunder which—

Cognizance
of offences.

- (a) is alleged to have been committed by any owner, agent or manager of a mine, or
- (b) is punishable with imprisonment.

30. The Board shall have the powers of a Civil Court for the purpose of enforcing the attendance of witnesses and compelling the production of documents; and every person required by the Board to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

Powers of
Board for
obtaining
evidence.

31. Any notice under section 19 may be sent by post.

Service of
notices.

32. The [Provincial Government]¹ may rescind or modify any order passed under this Act by any authority.

Power of
Provincial
Govern-
ment to
alter or res-
cind orders.

1. Substituted by the A. O. for "L. G."

BIHAR AND ORISSA ACT VIII OF 1920
(THE BIHAR AND ORISSA KAMIAUTI AGREEMENTS ACT, 1920)

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SECTIONS

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6. Bar to suits on kamiauti agreements when void
7. Bar to suits on kamiauti agreement except for recovery of value of labour not performed without just cause.

BIHAR AND ORISSA ACT VIII OF 1920

[THE BIHAR AND ORISSA KAMIAUTI AGREEMENTS ACT, 1920]¹

(10th November, 1920)

An Act to make provision regarding agreements for the performance of certain kinds of labour in the province of Bihar and Orissa.

Whereas it is expedient to limit the period and regulate the terms of, and otherwise to make provision regarding agreements for, the performance of certain kinds of labour;

And whereas the previous sanction of the Governor-General has been obtained under section 79 of the Government of India Act, 1915, to the passing of this Act :—

It is hereby enacted as follows :

1. (1) This Act may be called the Bihar and Orissa Kamiauti Agreements Act, 1920. Short title and extent

(2) It extends to the whole of the Province of Bihar and Orissa including the Santal Parganas and the district of Angul.²

2. In this Act, unless there is something repugnant in the Definitions, subject or context,—

(1) 'advance' means an advance of money or in kind or partly of money and partly in kind, and includes any transaction which is, in the opinion of the Court, substantially an advance ;

(2) 'executant' means the party to a kamiauti agreement who undertakes that he or some other person shall perform labour ;

(3) 'Kamia' means a person who under the terms of a kamiauti agreement is to perform labour ;

(4) 'kamiauti agreement'

(a) means an agreement written or oral, or partly written and partly oral, wherein the consideration for the performance of labour by any person is or includes one or more of the following : namely, an advance made or to be made to any person, the interest on such advance, a debt due by any person, the interest on such debt; and

1. LEGISLATIVE PAPERS—For Statement of Objects and Reasons, see the B. & O. Gazette, 1921, Pt. V, p. 110; for Report of the Select Committee, see ibid Pt. V, p. 140; and for Proceedings in Council, see ibid, Pt. VI, pp. 357 and 449.

2. The then district of Angul included the present districts of the Khondmals,

THE BIHAR AND ORISSA

(B. & O. A.)

(Secs. 3-4)

(b) includes any transaction which, in the opinion of the Court, is substantially such an agreement, but—
 (c) does not include

- (i) an agreement to work entered into by a skilled workman,
- (ii) an agreement to work outside the area to which this Act extends, or
- (iii) an agreement to supply a cart and cartman.

(5) 'labour' means agricultural labour and includes domestic service or labour whether indoor or outdoor.

3. In respect of every kamiauti agreement subsisting at the commencement of this Act, each of the following shall, if it has not previously occurred, be deemed on the expiry of one year from such commencement to have occurred :—

- (a) all the stipulated labour to have been duly performed, and every obligation to perform labour or to provide a kamia to have been discharged;
- (b) the advance, principal and interest, to have been repaid;
- (c) the debt and interest thereon to have been discharged.

4. (1) A kamiauti agreement entered into after the commencement of this Act shall be wholly void :—

- (i) unless the full terms of the agreement between the parties are expressed in an instrument duly stamped according to the law for the time being in force;
- (ii) unless the person making the advance or to whom the debt is due, delivers to the executant a counterpart of the said instrument at the time of the execution of the instrument;
- (iii) if the period express or implied during which the labour is to be performed exceeds, or might in any possible event exceed, one year;
- (iv) unless it provides that on the expiry of the period during which the labour is to be performed, all liability shall be extinguished in respect of any advance, debt or interest which is the consideration or part of the consideration of the agreement;
- (v) unless it provides for a fair and equitable rate of remuneration for the labourer.

(2) No kamiauti agreement which is void under clauses (i) to (iv) of sub-section (1) of this section shall be admitted to registration.

³ As to registration of agreements, see the Indian Registration Act, 1908 (XVI of 1908) ss. 17-18, in Central Acts Vol. V, p. 433. These provisions do not apply to a kamiauti agreement by virtue of sub-section (2) of s. 4 above.

In subsisting
kamiauti
agreements,
labour
deemed
performed
and advance
and debt
discharged
after one
year.

Future
kamiauti
agreement
unless
satisfying
certain
conditions,
void and
inadmissible
to registra-
tion.

(Secs. 5-7)

5. A *kamiauti* agreement shall become void on the death either of the *kamia* or of the executant, or if such *kamia* or executant is dead at the commencement of this Act, at such commencement; and notwithstanding anything to the contrary in the *kamiauti* agreement or in any law, no liability to perform labour or in respect of the non-performance thereof shall survive against the estate or against any heir of the deceased, nor shall any suit be brought to enforce such liability.

Kamiauti
agreement
void on
death of
labourer or
other
executant,
and liability
to labour
extinguish-
ed.

6. Notwithstanding anything contained in section 4 or in any contract for the performance of labour or in respect of any advance, debt or interest which is the consideration or part of the consideration of the agreement.

Bar to suits
on *kamiauti*
agreements
when void.

7. (1) Except as provided in this section, no suit shall lie against the executant of a *kamiauti* agreement or any other person in respect of non-performance of labour, or in respect of any advance, debt or interest which is the consideration or part of the consideration of the agreement.

Bar to suits
on *kamiauti*
agreement
except for
recovery of
value of
labour not
performed
without just
cause.

(2) If during the period of a valid *kamiauti* agreement, the *kamia* without just cause withholds the stipulated labour or does not conform to the provisions of section 3 (a), a suit may be filed for the recovery of the net value of the labour so withheld or not performed, but no decree shall be passed in such suit for a sum exceeding the principal of the advance or of the debt, and the costs in the suit.

I. Printed in Central Acts, Vol. II, p. 91.

BIHAR AND ORISSA ACT II OF 1922
{THE BIHAR AND ORISSA COURT-FEES (AMENDMENT) ACT, 1922}

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BIHAR AND ORISSA ACT II OF 1922

[THE BIHAR AND ORISSA COURT-FEES (AMENDMENT) ACT, 1922]¹

(21st August, 1922)

An Act to amend the Court-fees Act, 1870

Whereas it is expedient to amend the Court-fees Act, 1870², in its application to the Province of Bihar and Orissa in the manner hereinafter appearing;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bihar and Orissa Court-fees (Amendment) Act, 1922.

Short title,
extent and
commencement.

(2) It extends to the whole of Bihar and Orissa including the Santal Parganas.

(3) It shall come into force on the twenty-fourth day of August, 1922.

* 2—5 * * *

6. In item viii of section 19 of the principal Act, for the words "one thousand rupees" the words "two thousand rupees" shall be substituted.

Amendment
of section
19.

* 7. and 8. * * *

9. For the entries above the proviso in the second column and

Amendment
of Article
11 of
Schedule I.

made exceeds two thousand rupees, on such amount or value up to ten thousand rupees,

and

when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,

and

Three per centum.

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the B. & O. Gazette, 1922, Pt. V, p. 98; for Report of the Select Committee, see ibid, p. 231; and for Proceedings in Council, see B. & O. Legislative Council debates, 1922, Vol. IV, p. 1715 and Vol. V, pp. 144 and 207.

2. Printed in Vol. I of this Code.

3. The whole of this Act, except ss. 6, 9, 10 and 13, rep. by the Orissa Court-fees (Amendment) Act, 1939 (Orissa Act, V of 1939), s. 2 and Sch. A.

THE BIHAR AND ORISSA
COURT-FEES (AMENDMENT) ACT, 1922

[B. & O. Act
II of 1922]

(Secs. 11-13)

when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees, Four per centum.

and when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees, Five per centum."

10. For the entry in the second column of Article 12 of Schedule I of the principal Act, and for the first paragraph in the third column of the said Article, the following shall be substituted, namely:—

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, on such amount or value up to ten thousand rupees, Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, three per centum.

and when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees, Three per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, four-and-a-half per centum.

and when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees, Four per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, six per centum.

and when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees, Five per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, seven-and-a-half per centum." *

11 and 12. * * * * *
13. Nothing in this Act shall apply to any probate, letters of administration or certificate under the Succession Certificate Act, 1859, in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued.

1. See foot-note 3 on p. 333, ante.

BIHAR AND ORISSA ACT III OF 1922
(THE BIHAR AND ORISSA VILLAGE ADMINISTRATION ACT, 1922)

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chaukidars
and chaukidars

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BIHAR AND ORISSA ACT III OF 1922

(THE BIHAR AND ORISSA VILLAGE ADMINISTRATION ACT, 1922)¹

(18th October, 1922)

An Act to develop self-government in the rural areas of Bihar and Orissa.

WHEREAS it is expedient to develop the system of self-government in the rural areas of Bihar and Orissa;

AND WHEREAS the previous sanction of the Governor-General has been obtained under section 80A, sub-section (3) of the Government of India Act to the passing of this Act;

It is hereby enacted as follows :—

PART I

PRELIMINARY

1. (1) This Act may be called the Bihar and Orissa Village Administration Act, 1922.
Short title,
local extent
and com-
mencement.
- (2) It extends to the territories for the time being administered by the [Provincial Government]² of Bihar and Orissa, except to any area which has been or may hereafter be constituted a municipality, under the provisions of the Bengal Municipal Act³.
- (3) It shall come into force⁴, in whole or in part, in such districts or in such parts of districts and on such dates as the [Provincial Government]² may by notification direct and the [Provincial Government]² may by notification withdraw this Act or any part thereof from any district or part of a district:

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the B. & O. Gazette, 1921, Pt. V, p. 376; for Report of the Select Committee, see ibid., 1922, Pt. V, p. 125; and for Proceedings in Council, see B. & O. Legislative Council Debates, 1922, Vol. IV, pp. 340, 412 and Vol. V, pp. 31 and 87.

LOCAL EXTENT.—See s. 1 (2). The application of this Act is barred in—

(i) the district of Angul by the Angul Laws Regulation, 1936 (Reg. V of 1936), s. 3 (2).

(ii) the district of Khondmals by the Khondmals Laws Regulation, 1936 (Reg. IV of 1936), s. 3 (2).

2 Substituted by the A. O. for "L. G."

3. Bengal Act III of 1894 has been rep. and re-enacted by the B. & O. Municipal Act, 1922 (B. & O. Act VII of 1922).

4. This Act was brought into force on different dates in different districts—see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII and Orissa L. S. B. & O. Vol. I, Pt. VII.

(Secs. 2-3)

Provided that this Act shall not come into force in any cantonment

Acts
repealed.

2. (1) When the provisions of Part IV are in force in any union, the enactments specified in Schedule I shall, from the date of election or appointment of the first President of the Union Board of that union, be repealed or amended to the extent and in the manner mentioned in the fourth column thereof.

(2) When the provisions of Part III are in force in any Union the enactments specified in Schedule II shall from the date of the notification be repealed or amended to the extent and in the manner specified in the fourth column thereof:

Provided that until a new assessment is made under this Act any assessment, rate or tax which was in force in such area under the provisions of the Bengal Local Self-Government Act, 1855,¹ is so far as they relate to Union Committees, or under the provisions of the Village Chaukidari Act, 1870², and of the Chota Nagpur Rural Police Act, 1914, shall continue to be in force and all sums due on account of such rate or tax shall be realized under the provisions of this Act and shall be credited to the Union Fund or to the Union Chaukidari Fund, as the case may be, and may be expended by the Union Board by which they are realized.

(3) (a) When in consequence of the repeal of the enactments referred to in sub-sections (1) and (2), any panchayat constituted under the Village Chukidari Act, 1870³, or any Union Committee constituted under the Bengal Local Self-Government Act, 1855, ceases to exist, all the properties, funds and dues which are vested in such panchayat or Union Committee shall be vested in such Union Board or Boards and in accordance with such allocation as may be determined by the District Magistrate, whose orders thereon shall be final.

(b) In any area in which the Chota Nagpur Rural Police Act, 1914, is repealed under the provisions of sub-section (3), the Deputy Commissioner shall determine what portion of the amount standing to the credit of the Chaukidari Fund shall be allotted to the Union Board or Boards and his orders thereon shall be final.

3. When the provisions of this Act are withdrawn from any district or part of a district under section 1, sub-section (3), the enactments specified in Schedule I or Schedule II, as the case may be, shall be deemed to be revived in such district or part to the extent to which they were modified by those schedules from the date of the publication of the notification of withdrawal:

1. The words "without the sanction of the G. G. in C. previously obtained" omitted by the A. O.

2. See now the Bihar and Orissa Local Self-Government Act, 1955.

3. Printed in Vol. II of this Code, p. 89.

Effect of
withdrawal
of the Act.

Provided that all assessments for the imposition of a tax under section 30 shall continue to be in force until a new assessment is made in accordance with the provisions of the Village Chukidari Act, 1870¹, or the Chota Nagpur Rural Police Act, 1914², and all properties, funds and other dues vested in any Union Board within such district or part of a district shall be vested in such local authorities, panchayats or persons and in such manner as may be determined by the District Magistrate, whose orders thereon shall be final.

4. In this Act, unless there is anything repugnant in the subject *Definitions* or context,—
- (1) "building" includes a hut and shed and a *kachari* for the collection of rent;
 - (2) "case" means a criminal proceeding in respect of an offence triable by a panchayat;
 - (3) "chaukidar" includes in Chota Nagpur a *gorait* and a *kotwar*;
 - (4) "dafadar" means a head chaukidar;
 - (5) "District Board" means a District Board established under the Bengal Local Self Government Act, 1885³, as amended by this Act, and includes a District Committee established under the Bengal Cess Act, 1880⁴, and a District Council established under the Central Provinces Local Self-Government Act, 1883,
 - (6) "District Judge" includes any officer subordinate to the District Judge to whom with the sanction of the [Provincial Government]⁵ he may delegate all or any of his powers under this Act;
 - (7) "District Magistrate" includes any officer subordinate to the District Magistrate to whom with the sanction of the [Provincial Government]⁵ he may delegate all or any of his powers under this Act;
 - (8) "notification" means a notification published in the [Official Gazette];
 - (9) "panchayat" means a panchayat constituted under this Act;
 - (10) "prescribed" means prescribed by rules under this Act;

1. Printed in Vol. II of this Code, p. 80.

2. See now the Bihar and Orissa Local Self-Government Act, 1885.

3. Printed in Vol. II of this Code, p. 255.

4. Substituted by the A. O. for "L. G."

5. Substituted by *ibid* for "Gazette".

THE BIHAR AND ORISSA

(E. & O. L.

- (Secs. 5-6)
- (11) "proprietor" and "tenure" have the meanings respectively assigned to those expressions by the *Chota Nagpur Tenancy Act, 1908*;
- (12) "public servant" means a public servant as defined in section 21 of the Indian Penal Code;
- (13) "subdivisional magistrate" means any magistrate in charge of a subdivision of a district;
- (14) "suit" means a civil suit;
- (15) "year" means a year beginning on the first day of April, or on such other date as may hereafter be fixed for any union by the [Provincial Government]¹ by notification; and
- (16) the expressions "non-bailable offence", "cognizable offence", "complaint", European British subject", "officer in charge of a police-station" and "police-station" have the same meaning as in section 4 of the Code of Criminal Procedure, 1898, and the expressions "decree", "legal representative" and "movable property", have the same meaning as in section 2 of the Code of Civil Procedure, 1908.

PART II

ESTABLISHMENT AND CONSTITUTION OF UNION BOARDS AND PANCHAYATS

5. The [Provincial Government]¹ may by notification—
 (a) declare any local area to be a union, and define the local limits of such area,

(b) direct that a Union Board shall be constituted for any such union, and

- (c) direct that the provisions of Part III or Part IV of this Act or both shall be in force in any such union.

6. In any area in which a Union Board has been constituted, the [Provincial Government]¹ may by notification² direct—

(a) that the members of the Union Board shall elect from among their own number three or more persons to be during their term of office as members of such Union Board a panchayat for the whole area of the union, or

- (b) that the members of the Union Board shall subdivide the union into panchayati circles and shall elect from among their own number three or more persons to be during their term of office as members of such Union Board, a panchayat for each of the panchayati circles so formed.

1. Substituted by the A. O. for "L. G."

2. For notifications issued under ss. 5, 6 and 7, see E. & O. Loca, Statutory Rules and Orders, Vol. I, Pt. VII and Orissa L. S. R. & O.

Formation
of unions
and estab-
lishment of
Union
Boards

Establish-
ment of
panchayats
in unions

<sup>Establish-
ment of
panchayats
in non-union
areas.</sup>

7. Without constituting a union, the [Provincial Government]² may by notification—

- (a) declare any local area to be a panchayati circle, and
- (b) direct that a panchayat shall be established for any such panchayati circle.

<sup>Constitu-
tion of
Union
Boards and
panchayats.</sup>

8. (1) A Union Board constituted under section 5 or a panchayat constituted under clause (b) of section 7 shall consist of such number of members not being less than three nor more than twenty as the [Provincial Government]² may in each case direct.

(2) The members of a Union Board or of a panchayat shall be elected within such time and in such manner as may be prescribed.

(3) The [Provincial Government]² may direct that the District Board of the district in which the union is situated shall elect, at a meeting, not more than two persons to be members of the Union Board in addition to the number fixed under sub-section (1). A person may be elected under this sub-section notwithstanding that he does not possess the qualifications specified in section 9 or in any rules thereunder.

(4) If on the date fixed for the election the electors of any union or panchayati circle fail to elect any member or members, the Chairman of the District Board in the case of a Union Board, and the District Magistrate in the case of a panchayat, shall either direct that a second election shall be held or fill the vacancies by appointment. Any person so appointed shall be qualified in the manner prescribed in section 9 and shall be deemed to be a duly elected member.

<sup>Qualifica-
tions of
voters and
members.</sup>

9. (1) Every male person owning or occupying a dwelling house within the union or panchayati circle who during the year immediately preceding such election has paid any sum as tax under Part III or Part IV of this Act or under the Village Chaukidari Act, 1870³, or the Chota Nagpur Rural Police Act, 1914, shall be entitled to vote at an election for members of the Union Board or panchayat if he is of the age of eighteen years, and

(2) if he is of the age of twenty-one years shall be entitled to be a member of such Union Board or panchayat, if duly elected thereto:

Provided that no person shall be a member of more than one Union Board or of more than one panchayat.

¹ For a list of panchayats constituted under s. 7, see B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

² Substituted by the A. O. for "L. G."

³ Printed in Vol. II of this Code, p. 69.

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[B. & O.]

(Secs. 10-12)

[Provided further that no person shall be eligible for election as a member if he is in the employment or pay of any institution or body which receives regular financial assistance from the District Board of the district in which the union is situated or is in the employment or pay of such District Board.]

(3) If in any area the Village Chaukidari Act, 1870¹, or the Chota Nagpur Rural Police Act, 1914 has not been in force the [Provincial Government]² shall prescribe³ the qualifications for voters and members.

10. No election held under this Act or under the rules the under shall be called in question in any court on any ground whatever.

11. Notwithstanding anything contained in this Act, no person who is not a British subject or a subject of any State in India shall be qualified to vote at an election of, or to be a candidate for election as, a member of a Union Board or a panchayat, nor shall such person be elected by the District Board to be a member of a Union Board :

Provided that the [Provincial Government]³ may by notification exempt from the provisions of this section any person or class of persons who are not British subjects or subjects of any State in India.

12. [(1)]⁴ The term of office of a member of a Union Board or a panchayat shall be three years from the date on which the District Magistrate shall declare the Board or panchayat to be duly constituted, but shall include any period which may elapse between the expiration of the said three years and the date of the first meeting at which a quorum is present, of the newly elected members after the next general election for the Union Board or panchayat.

[(2) Notwithstanding anything contained in sub-section (1) and subject to the provisions of section 13, the Provincial Government may, by notification, extend the term of office of the members and consequently of the President and Vice-President of any Union Board and the term of office of the members and consequently of the Sarpanch of any panchayat holding office at the time of the commencement of the Bihar and Orissa Village Administration (Orissa Amendment) Act, 1948, for such period as they may deem fit.]

1. Inserted by the Bihar and Orissa Village Administration (Amendment) Act, 1934 (B. & O. Act V of 1934), s. 2.

2. Printed in Vol. II of this Code, p. 89.

3. Substituted by the A. O. for "L. G."

4. For qualifications for voters and members in the district of Sambalpur, see the B. & O. Village Administration Manual, 1932.

5. Inserted by the Bihar and Orissa Village Administration (Orissa Amendment) Act, 1948, (Orissa Act VII of 1948), s. 2.

(Ses. 13-17)

13. (1) The District Board may remove any member of a Union Board from his office—
- (a) who is convicted of any non-bailable offence indicating moral turpitude; or
 - (b) who refuses to act, or becomes incapable of acting, or is declared to be insolvent, or
 - (c) who has been declared by notification to be disqualified for employment in the public service; or
 - (d) who, without an excuse sufficient in the opinion of the District Board, absents himself from six consecutive meetings of the Union Board without having obtained previously permission from the President of the Union Board; or
 - (e) who has been guilty of misconduct in the discharge of his duties, if two-thirds of the total number of the members of the Union Board, at a meeting, recommend his removal.

(2) No person who has been removed from his office under clause (a) or clause (c) of sub-section (1) shall be eligible for re-election within such period as may be specified by the District Board.

(3) A member who has been removed from his office under sub-section (1) shall thereupon cease to be a member of a panchayat constituted under section 6.

14. When the place of a member of a Union Board or of a panchayat becomes vacant by his removal, resignation or death, a new member shall be elected in the manner prescribed and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred : Filling of casual vacancies.

Provided that no act of a Union Board or of its officers shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act was less than the prescribed number.

15. (1) Every Union Board shall be presided over by a President, who shall be elected by the members of the Union Board from among their own number. Election of President.

(2) If any Union Board ... President within the period mentioned above, the Board shall appoint a m

16. Every Union Board may elect one of its members to be the Vice-President of the Board. Election of Vice-President.

17. The term of office of a President or Vice-President of a Union Board shall be the residue of his term of office as a member. Term of office of President.

Resignation
of President.

(Secs. 18-21A)

18. (1) A President of a Union Board may resign during his term of office by notifying in writing his intention to do so to the Chairman of the District Board and to the Union Board, and on such resignation being accepted by the Chairman shall be deemed to have vacated his office.

(2) A Vice-President or a member of a Union Board may resign during his term of office by notifying in writing his intention to do so to the Union Board, and on such resignation being accepted by the Union Board shall be deemed to have vacated his office.

Casual
vacancy in
office of
President
and Vice-
President.

19. (1) If the President dies, resigns or is removed from his office under section 13, the Union Board shall, at a meeting within the period prescribed, elect from among its members a new President, and if the Union Board fails to elect a President within the prescribed period, the Chairman of the District Board shall appoint a new President.

(2) If the Vice-President dies, resigns or is removed, the Union Board may elect from among its own members a new Vice-President.

Incorpora-
tion of
Union
Boards.

20. Every Union Board shall be a body corporate by the name of "the Union Board of (name of union)", and shall have perpetual succession and a common seal and shall by the same name sue and be sued, with power to acquire and hold property, both movable and immovable and, subject to any rules prescribed under this Act, to transfer any such property held by the Board and to contract and do all other things necessary for the purposes of this Act.

21. In any union in which the provisions of Part IV are not in force, the District Magistrate shall exercise all the powers conferred on the District Board or on the Chairman of the District Board by sections 8 (4), 13, 15 (2), 18 (1) and 19 (1).

Powers to
be exercised
by the
District
Magistrate
in unions
where Part
IV is not
in force
Dissolution
of a union
board.

¹[21—A. (1) If in the opinion of the [Provincial Government]² a union board is not competent to perform, or persistently makes default in the performance of, the duties imposed on it under this Act or otherwise by law, or exceeds or abuses its powers, the [Provincial Government]² may, by notification, specifying the reasons for so doing, declare such union board to be incompetent or in default, or to have exceeded or abused its powers, and may direct that on a date to be specified in such notification the office of the members of the union board shall be deemed to be vacant and require a fresh election to be held on or before the said date.

(2) The members of a union board who vacate office by reason of a direction under sub-section (1) shall, unless the [Provincial Government]² otherwise directs, be eligible for re-election.]

¹ Inserted by B. & O. Village Administration (Amendment) Act, 1951.
² A.O. Act 1 of 1951, s. 2.

² Substituted by the A. O. for "L. G."

(Secs. 22-26)

PART III
VILLAGE POLICE

22. No provision contained in this Part shall apply to any union unless and until it has been expressly extended thereto by the [Provincial Government]¹ by notification.² Extension of Part III.

23. Subject to the control of the Commissioner, the District Magistrate shall from time to time determine after consideration of the proposals of the Union Board the number of dafadars, if any, and chaukidars to be employed within each union, the salaries to be paid to them and the nature and cost of their equipment. Appoint-
ment of
dafadars
and
chaukidars.

24. [(1)]³ The salaries and cost of equipment of dafadars and chaukidars shall be paid by the Union Board, and the dafadars and chaukidars shall receive their salaries and equipment at such time and place and in such manner as may be prescribed.⁴ Payment of
salaries,
etc., of
dafadars
and
chaukidars.

[(2) A dafadar or chaukidar shall receive from the Union Fund one anna for every summons served by him].

25. (1) The Union Board shall, when a vacancy exists, nominate a person to be a dafadar or a chaukidar under this Act, and the [Provincial Government]⁵ shall, if satisfied with such nomination, appoint such nominee: Appoint-
ment and
dismissal
of dafadar
and chauki-
dars.

Provided that, if the Union Board fails within a reasonable time to nominate a person to be a dafadar or chaukidar, or if the District Magistrate is of the opinion that the District Magistrate fit to be a dafadar

(2) The District Magistrate, or the Union Board with the sanction of the District Magistrate, may dismiss any dafadar or chaukidar.

26. (1) The Union Board may punish any dafadar or chaukidar who is guilty of any misconduct in his office or neglect of duty with a fine not exceeding one-quarter of a month's salary. Power to
fine
dafadars
and chau-
kidars.

(2) The District Magistrate may revise any order passed by the Union Board under sub-section (1) and may punish any dafadar or chaukidar who is guilty of misconduct or neglect of duty with a fine not exceeding one month's salary.

1. Substituted by the A. O. for "L. G."

2. For a list of unions to which Part III of the Act has been extended, see the Bihar and Orissa L. S. R. & O., Vol. I, Pt. VII.

3. Inserted by the B. & O. Village Administration (Amendment) Act, 1934 (B. & O. Act V of 1934), s. 3.

4. See the B. & O. Chaukidari Rules, 1923, in B. & O. Village Administra-
tion Manual, 1932.

5. Substituted by the A. O. for "District Magistrate."

Powers and
duties of
dafadars
and
chaukidars.

(Sec. 27)

27. (1) Every chaukidar shall exercise the following powers and perform the following duties :—

- (i) he shall give immediate information to the officer in charge of the police-station within the limits of which the union is situated and to the President of the Union Board, of every unnatural, suspicious or sudden death which may occur, and of any offence specified in Schedule III which may be committed within the union, and he shall keep the police and the President of the Union Board informed of all disputes which are likely to lead to a riot or serious affray;
- (ii) he shall arrest—
 - (a) all proclaimed offenders;
 - (b) all persons whom he may find in the act of committing any offence specified in Schedule III;
 - (c) any person against whom a hue and cry has been raised of his being concerned in any offence specified in Schedule III whether such offence has been or is being committed within or outside his union;
 - (d) any person in whose possession anything is found which may reasonably be suspected to be stolen property, or who may reasonably be suspected of having committed an offence with reference to such thing; and
 - (e) any person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;
- (iii) he shall, to the best of his ability, prevent, and he may interpose for the purpose of preventing, the commission of any offence specified in Schedule III;
- (iv) he shall assist private persons in making such arrests as they may lawfully make, and he shall report such arrests without delay to the officer in charge of the aforesaid police-station;
- (v) he shall observe and from time to time report to the said officer the movements of all bad characters within the union;
- (vi) he shall report to the said officer the arrival of suspicious characters in the neighbourhood;
- (vii) he shall report in such manner as may be prescribed by the District Magistrate the births and deaths which have occurred within the union;

(Secs. 28-30)

- (viii) he shall supply any local information which the District Magistrate or any police officer may require;
- (ix) he shall obey the orders of the Union Board in regard to keeping watch within the union and in regard to other matters connected with his duties as chaukidar;
- (x) he shall give immediate information to the Union Board of any encroachment on, or obstruction to, any road within the union and of any damage to any property under the control of the Union Board;
- (xi) he shall assist the person collecting the union tax in making such collection;
- (xii) he shall serve such processes upon persons resident within the union as may be prescribed by rules under this Act; and
- (xiii) he shall carry out such other duties as may be entrusted to him from time to time in accordance with this Act or any rules¹ made thereunder.

(2) Every dafadar shall exercise all the powers conferred on a chaukidar under sub-section (1) and shall perform such duties as may be imposed upon him by rules made under this Act.¹

28. Whenever a dafadar or chaukidar arrests any person under section 27, he shall forthwith take the person so arrested to the police-station within the limits of which the union is situated:

Provided that, if the arrest is made at night, such person shall be so taken, as soon as convenient, on the following morning.

29. All fines realized from a dafadar or chaukidar under section 26 shall be credited to a District Chaukidari Reward Fund, the control over which shall rest with the District Magistrate.

30. (1) The Union Board shall impose yearly on the owners and occupiers of buildings within the union a tax equal to the amount required, after deduction of the contribution, if any, made by the [Provincial Government]² in this behalf, for the salaries and equipment of the dafadars and chaukidars of the union together with a sum of not more than fifteen per centum above such amount to meet the expenses of collections and losses due to the non-realization of the tax from defaulters.

(2) The proceeds of the tax imposed under this section shall be credited to a fund to be called the "Union Chaukidari Fund".

Procedure
on arrest by
dafadar or
chaukidar

Fines to be
credited to
District
Chaukidari
Reward
Fund

Imposition
of chauki-
dar tax by
Union
Board.

1. For rules regarding the duties of dafadars and chaukidars, see the B. & O. Village Chaukidari Rules, 1923, in the B. & O. Village Administration Manual, 1932.

2. Substituted by the A. O. for "L. G."

Nature of
assessment.

31. (1) The tax imposed under the preceding section shall be an assessment according to the circumstances and the property with the union of the owners and occupiers of buildings:

Provided that in the Chota Nagpur Division every proprietor or tenure holder who has *khas* cultivation within the union shall also be liable to assessment.

(2) The amount assessed on any person in any one year shall not exceed twelve rupees.

(3) Any person who in the opinion of the Union Board is too poor to pay half an anna a month shall be altogether exempt from the payment of the tax.

Procedure
of assess-
ment and
revision
thereof
by the
Union
Board

32. The assessment for the imposition of the tax under section 30 shall be made in accordance with rules prescribed under this act and any person dissatisfied with the amount at which he has been assessed may, within such time as may be prescribed, apply to the Union Board, either orally or in writing, for a revision of the assessment, and the Union Board may amend the assessment or confirm the same.

33. The District Magistrate may, at any time, call for the papers containing the assessment of the tax imposed under section 30, and may, after such inquiry as may be necessary, pass such order thereon as he may think proper.

Arrear to be
recovered by
distraint
and sale of
movable
property
of defaulter

34. The payment of the tax shall be made in accordance with rules prescribed under this Act and, in case of default of any such payment, the President of the Union Board, or, if so directed by him the Vice-President, shall cause the chaukidar or any other person authorized in writing by the President or the Vice-President to levy, by the distraint and sale of a sufficient portion of the movable property of the defaulter, the amount of his arrear, together with a sum equal to half the amount of such arrear, by way of penalty.

35. (1) The distraint and sale of such movable property shall be conducted in accordance with rules prescribed under this Act.

(2) All goods and chattels, except plough cattle and tools and implements of trade and agriculture, found in or upon any building or land occupied by any defaulter, shall be deemed to be his property and shall be liable to be distrained and sold for the recovery of the arrear and also the penalty due under section 34.

1. See the Union Board Account Rules in the B. & O. Village Administra-
tion Manual, 1932.

(Secs. 36-39)

(3) If any of the goods and chattels liable to be distrained belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner of such goods and chattels for any damage he may sustain by reason of such distress or by reason of any payment he may make to avoid such distress or any sale under the same.

(4) The [Provincial Government]¹ may, by rule, with respect to Union Boards generally or to any Union Board or class of Union Boards in particular, except any movable property from distress and sale.

36. If the Union Board is unable to recover under section 35 the amount due for the arrear of the tax and the penalty, the District Magistrate may, on the application of the Union Board, issue his warrant to any officer of his court for the distress and sale of any movable property or effects belonging to the defaulter within any other part of his jurisdiction, or for the distress and sale of any movable property belonging to the defaulter within the jurisdiction of any other magistrate exercising jurisdiction within Bihar and Orissa; and such other magistrate shall endorse the warrant so issued and cause it to be executed, and the amount, if levied, to be remitted to the magistrate issuing the warrant, who shall remit the same to the Union Board.

Distress
and sale of
property
beyond
limits of
the union.

37. No distress levied by virtue of this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser on account of any defect, irregularity or want of form in any assessment, notice, summons, power, writing, inventory or other proceeding relating thereto, nor shall such person be deemed a trespasser from the commencement on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity may recover full satisfaction for any special damage sustained by them, in any court of competent jurisdiction, subject to the provisions of section 92.

Irregularities
not to be
avoided
distress.

38. No arrears of any tax payable under this Act shall be recovered by distress after the expiration of fifteen months from the date on which the same shall have become due.

Distress not
to be evoked
after fifteen
months.

39. (1) If at any time in a union to which the provisions of this Part have been extended², the District Magistrate is satisfied that the whole or any portion of the salaries, or of the cost of equipment, of dafadars and chaukidars is in arrear, the District Magistrate may, after considering any objection that may be made by the Union Board, appoint such person or persons as he may consider necessary to realize any sum so due, together with the incidental cost (if any) of collecting it.

Default in
payment of
chaukidars.

1. Substituted by the A. O. for "L. G."

2. For a list of unions to which Pt. III of this Act has been extended, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

THE BIHAR AND ORISSA

(Sects. 40-41)

[B. & O. A.]

(2) Any person so appointed may realize any such sum and cost from the balance at the credit of the Union Chaukidari Fund or by the collection of the outstanding portion of the tax as assessed by the Union Board, or, if the amount so collected is insufficient, by the imposition and collection of a supplementary assessment.

(3) A person so appointed shall exercise all the powers vested in the Union Board for the assessment and collection of the tax.

(4) The amount so collected under sub-section (2) shall be disbursed in the payment of the sum and the cost referred to in sub-section (1), and the balance, if any, shall be paid to the Union Chaukidari Fund.

40. Whenever in the Chota Nagpur Division any proprietor or tenure-holder holds subject to the condition, expressed or implied, of maintaining the chaukidars within his estate or tenure, he shall be liable to pay to the Deputy Commissioner such sum as the Deputy Commissioner may determine, and the Deputy Commissioner shall pay the sum so determined to such Union Board or Boards and in accordance with such allocation as he may think fit.

PART IV.

POWERS AND DUTIES OF UNION BOARDS

41. In any union in which the provisions of this Part are in force, the following matters shall be under the administration of the Union Board, subject to the control of the District Board and subject to such rules, if any, as the [Provincial Government]¹ may prescribe—

(a) the conservancy and sanitation, including drainage of the local area and the prevention of public nuisances therein;

(b) the supply of water for domestic purposes within the local area;

(c) the construction and maintenance of such roads, footpaths and bridges within the local area, not being private property and not being under the control of the [Provincial Government]², the District Board or the Local Board, as the Union Board may consider

1. For a list of unions to which Pt. IV of this Act has been extended, see A. O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

2. Substituted by the A. O. for "L. G."

D. A. O. Village Administration Manual, 1932.

(Sec. 42)

necessary, and of such roads, foot-paths and bridges as may be transferred to the Union Board with its consent;

- (d) the charge, maintenance and management of existing primary schools, if transferred to the Union Board by the District Board with the consent of the Union Board, and the establishment of new primary schools, including *tols*, *pathasalas* and *maktabs*;
- (e) [the establishment and the maintenance of new dispensaries, and]¹ the maintenance of existing dispensaries, if transferred to the Union Board by the District Board with the consent of the Union Board, and the provision of other forms of medical relief of any kind;
- (f) such functions as may be transferred to it by notification² under section 31 of the Cattle Trespass Act, 1871³, or under any Act.
- (g) the management of any public ferry, if vested in the Union Board by an order under section 35 of the Bengal Ferries Act, 1885⁴;
- (h) if required by the [Provincial Government]⁵, the registration⁶ of births and deaths within the union under the provisions of the Bengal Births and Deaths Registration Act, 1873⁷;
- (i) any other local work of public utility likely to promote in this Act.

42. The Commissioner, the District Magistrate, the Chairman of the District Board and any officer or person authorized by them or by the [Provincial Government]⁸ shall have power at all times to inspect all the accounts, proceedings and records of a Union Board and to enter on and inspect, or cause to be entered on and inspected, any immovable property occupied by, or any work in progress under the orders of, or any institution controlled by, a Union Board.

Power of inspection.

1. Inserted by the Bihar and Orissa Village Administration (Amendment) Act, 1934 (B. & O. Act V of 1934), s. 4.

2. For a list of notifications under s. 31 of the Cattle Trespass Act, 1871 (I of 1871), see the B. & O. Local Statutory Rules and Orders Vol. I, Pt. IV.

3. Printed in Central Acts, Vol. I, p. 609.

4. Printed in Vol. II of this Code, p. 341.

5. Substituted by the A. O. for "L. G."

6. For a list of notifications directing registration of births and within unions, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. I.

7. Printed in Vol. II of this Code, p. 115.

THE BIRBAN AND ORISSA

(Secs. 43-46)

[B. & O. Ad]

Default by
Union
Board

43. (1) The District Board may, after local inquiry, direct the Union Board to take such action as the District Board may deem necessary for carrying out the duties entrusted to the Union Board under section 41, and may fix a period for the performance of action.

(2) If the Union Board fails to take action in accordance with the orders of the District Board, the District Board may cause such action to be taken through its own agency and may recover the cost thereof from the Union Board:

Provided that the Union Board may appeal to the [Provincial Government]¹, or to such officer as the [Provincial Government] may direct, within thirty days of such order against such order;

Provided further that no increase of the tax imposed under section 46 shall be made in consequence of such order without the sanction of the [Provincial Government]¹.

44. (1) The District Board, after considering the views of the Union Board, may, subject to the control of the [Provincial Government]¹, frame by-laws for carrying out all or any of the purposes of this Act.

(2) In making any by-law under this section the District Board may provide that any breach thereof shall be punishable with a fine which may extend to twenty rupees, and in the case of a continuous breach with a further fine not exceeding one rupee for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

(3) By-laws made under this section shall have the force of law after confirmation by the Commissioner and after publication in such manner and for such period as the [Provincial Government]¹ may direct.

45. The Union Board shall supply any local information which the District Magistrate or District Board may require, and in particular shall supply prompt information of any outbreak of epidemic disease in such manner and to such authorities as the [Provincial Government]¹ may direct.

UNION FUND

46. The Union Board may impose a tax upon the owners and occupiers of buildings within the union, provided that the proposal for the imposition of the tax has been considered by the Union Board at a meeting specially convened for the purpose and has been approved by not less than two-thirds of the total number of members of the Union Board.

Supply of
a fortificationImpression
of union
tax.

(Secs. 47-50)

47. The tax imposed by a Union Board under section 46 shall be an assessment according to the circumstances and the property within the union of the owners and occupiers of buildings : Nature of assessment.

*Provided that—

- (a) the amount to be assessed on any person in any one year shall not exceed thirty rupees ; and
- (b) any person who, in the opinion of the Union Board, is too poor to pay the tax may altogether be exempted from assessment.

48. Sections 32 to 38 shall apply to the assessment, revision of assessment, payment and collection of the tax imposed under section 46, except that the power conferred on the District Magistrate by section 33 shall be exercised by the Chairman of the District Board. Provisions applicable to assessment, etc.

49 (1) There shall be formed for each Union a fund to be Union Fund, called the "Union Fund", to which shall be credited—

(a) all sums realized on account of the tax imposed under section 46 ;

(b) * * * * * *¹

(c) * * * * * *¹

(d) all donations and contributions from the [Provincial Government]², the District Board or any private person ;

(e) * * * * * *¹

(f) any sums transferred to the Union Board by an order under section 2.

(2) The accounts of the Union Board shall be kept in accordance with such rules³ as may be prescribed.

50. Except as it otherwise provided in this Act, the Union Fund shall be applied to the payment of expenditure incurred by the Union Board or by the panchayats, in carrying out the purposes of this Act : Application of Union Fund.

Provided that the salaries of the establishment of the Union Board shall be the first charge upon the union fund ;

Provided also that all funds made over to the Union Board for a specific purpose shall be applied solely to that purpose.

1. Clauses (b), (c) and (e) omitted by the A. O.

2. Substituted by the A. O. for "L. G."

3. See the Union Board Account Rules in the B. & I. Y. C. Adminstration Manual, 1922.

(Secs. 51, 53)

Grant-in-
aid to
Union
Boards

51. The District Board may make to the Union Board such grants-in-aid from the district fund, as they may think fit, to enable the Union Board to carry out the duties specified in section 41, and may attach to grants any conditions that may appear to the District Board to be desirable:

Provided that—

- (1) during first two years after the establishment of the Union Board the District Board shall make a suitable grant-in-aid;
- (2) when any of the duties specified in clauses (c), (d) and (e) of section 41 have been transferred to the Union Board by the District Board, the District Board shall make grants-in-aid adequate for the performance of such duties, and the amount of any such grant shall not be reduced without the consent of the Union Board;
- (3) in the case of any Union Board which has imposed a tax under section 46 the District Board¹ [shall make a grant-in-aid, which shall, except when the [Provincial Government]² otherwise directs, be not less than the amount of the tax realized in the previous year, and]
- (4) in calculating the grant-in-aid under provisos (1) and (2) all sums transferred from the District Board to the Union Board under the Cattle-Trespass Act, 1871³, or the Bengal Ferries Act, 1885⁴, may be taken into account.

PART V

POWERS, DUTIES AND PROCEDURE OF PANCHAYATS

52. (1) The local limits of the jurisdiction of a panchayat established under clause (a) of section 6 shall be the whole area of the union constituted under section 5.

(2) The local limits of the jurisdiction of a panchayat established under clause (b) of section 6 or under section 7 shall be the whole area of the panchayati circle constituted under those sections.

53. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, a panchayat constituted under section 6 or 7 shall have jurisdiction concurrent with that of the criminal court within the local limits of whose jurisdiction the panchayati circle is situated to take cognizance of and to try the following offences as well

Local juris-
diction of
panchayats.Criminal
jurisdiction
of pan-
chayats.

¹ Substituted by the Bihar and Orissa Village Administration (Amendment) Act, 1934 (B. & O. Act V of 1934), s. 5.

² Substituted by the A. O. for "L. G."

³ Printed in Central Acts, Vol. I, p. 609.

⁴ Printed in Vol. II of this Code, p. 241.

(Sec. 53)

as abettments of and attempts to commit any such offence if committed within the local limits of its jurisdiction—

(a) UNDER THE INDIAN PENAL CODE—

Offence	Section
Committing affray	160
Refusing oath or affirmation when duly required by a public servant to make it	178
Refusing to answer public servant authorized to question	179
Fouling the water of a public spring or reservoir ...	277
Negligent conduct with respect to any animal ...	289
Punishment for public nuisance in cases not otherwise provided for	290
Obscene acts and songs	294
Voluntarily causing hurt	323
Wrongfully restraining any person	341
Assault by the use of criminal force otherwise than on grave and sudden provocation	352
Theft, when the value of the property stolen in the opinion of the panchayat does not exceed fifty rupees	379
Dishonestly receiving stolen property knowing it to be stolen, when the value of the property in the opinion of the panchayat does not exceed fifty rupees	411
Mischief, when the damage or loss caused in the opinion of the panchayat does not exceed fifty rupees in value	426
Insult intended to provoke a breach of the peace...	501
Uttering any word or making any gesture intending to insult the modesty of a woman, etc.	503
Appearing in a public place, etc., in a state of intoxication and causing annoyance to any person	510
(b) UNDER THE CATTLE TRESPASS ACT, 1871—	
Forcibly opposing the seizure of cattle or rescuing the same	24
Causing damage to land or crops or public roads by pigs	26
Failure of pound-keeper to perform duties	27

(Sec. 54)

(c) Offences under this Act or under any rule or by-laws made thereunder or under enactments (other than the Indian Penal Code) which are punishable with fine only up to a limit of fifty rupees

(d) Offences under section 34 of the Police Act, 1861.

(2) A panchayat may try any of the following offences if the case is transferred to the panchayat by the District Magistrate, Subdivisional Magistrate or any other magistrate empowered to transfer cases under section 192 of the Code of Criminal procedure, 1898.—

UNDER THE INDIAN PENAL CODE—

Offence	Section
Danger or obstruction in public way	283
Dishonest misappropriation of movable property or converting it to one's own use, when the value of the property in the opinion of the Magistrate is not over fifty rupees	403
Mischief by killing, poisoning, maiming or rendering useless any animal of the value of ten rupees and upwards	423
Mischief by causing diminution of supply of water for agricultural purposes	430
Criminal intimidation	506
Criminal trespass	447
House trespass	445

Provided as follows—

(a) Magistrate before whom a complaint of any offence cognizable by a panchayat is brought shall, unless reason to the contrary be shown to his satisfaction, transfer the complaint to the panchayat;

(b) the District Magistrate or Subdivisional Magistrate may transfer any case from one panchayat to another or to any other court subordinate to him.

(3) Nothing in this section shall be deemed to authorize panchayat to try any case in which a European British subject is concerned whether as complainant or accused.

54. No panchayat shall take cognizance of any offence under section 379 or 411 of the Indian Penal Code in which the accused—

(a) has been previously convicted of an offence punishable under Chapter XVII of the Indian Penal Code, with

(Sect. 55)

imprisonment of either description for a term of three years or upwards, or

- (b) has been previously fined for theft by any panchayat, or
- (c) is a registered member of a criminal tribe under section 4 of the Criminal Tribes Act, 1911¹, or
- (d) has been bound over to be of good behaviour in proceedings instituted under section 109 or section 110 of the Code of Criminal Procedure, 1898

55. (1) A panchayat may sentence any offender convicted by it to a fine not exceeding fifty rupees or double the value of the damage or loss caused, whichever is greater, or in default to imprisonment for a period not exceeding fourteen days, provided that the panchayat may, in lieu of sentencing an offender convicted by it to a fine, pass the order "convicted and discharged with a warning".

Punish-
ments

(2) If a panchayat is satisfied after inquiry that a complaint made before it or transferred to it for trial is vexatious or frivolous, the panchayat may order the complainant to pay to the accused such compensation not exceeding twenty-five rupees as it thinks fit, or in default may sentence the complainant to simple imprisonment for a period not exceeding seven days.

(3) If a fine is inflicted under sub-section (1), the panchayat may order the whole or any portion of the fine recovered to be applied—

- (a) in defraying expenses properly incurred in the case by the complainant;
- (b) in compensation for any material damage or loss caused by the offence committed.

Provided that notwithstanding anything contained in the Indian Penal Code:—

- (a) the fine imposed or compensation awarded by a panchayat shall not be realized from any person who has served his term of imprisonment in default;
- (b) the person serving his term of imprisonment shall be forthwith released if the fine or compensation is paid before the expiry of the term of imprisonment.

¹. Act III of 1911 has been rep. and re-enacted by the Criminal Tribes Act 1924 (VI of 1924) in Central Acts, Vol. VIII, p. 132.

THE BIHAR AND ORISSA

(Secs. 56-58)

(B & O.A.)

Enhanced
powers
of selected
panchayats.

56. Panchayats which are specially empowered by the [Provincial Government]¹ in this behalf shall exercise the following enhanced powers :—

(a) to take cognizance of and to try cases under sections 373, 411 and 420 of the Indian Penal Code, when the value of the property stolen or of the amount of damage or loss caused does not exceed one hundred rupees, and under such other sections of the Indian Penal Code as the [Provincial Government]² may direct;

(b) to sentence any offender convicted before it to a fine not exceeding one hundred rupees or double the damage or loss caused, whichever is greater, or in default to imprisonment not exceeding one month.

57. (1) Notwithstanding anything contained in the Bengal Agra and Assam Civil Courts Act, 1887³, the Provincial Small Cause Courts Act, 1887⁴, and the Code of Civil Procedure, 1908, and subject to the provisions of sections 60 and 61 a panchayat constituted under section 6 or 7 shall have jurisdiction to hear and determine the following classes of suits, namely :—

- (a) suits for money due on contracts,
- (b) suits for the recovery of movable property or the value of such property, and
- (c) suits for compensation for wrongfully taking or injuring movable property, when the value of the suit does not exceed twenty-five rupees:

Provided that a panchayat which is specially empowered in this behalf by the [Provincial Government]¹ may hear and determine such suits when the value of the suit exceeds twenty-five rupees, but does not exceed one hundred rupees.

(2) No court other than a panchayat shall take cognizance of any suit of the class or value specified in sub-section (1), unless and until the District Judge has passed an order under section 78 or unless and until the panchayat has passed an order under clause (c) of sub-section (2) of section 65.

58. Notwithstanding anything contained in the Bengal, Agra and Assam Civil Courts Act, 1887⁵, the Provincial Small Cause Courts Act, 1887⁶, and the Code of Civil Procedure, 1908, and subject to the provisions of sections 60 and 61 a panchayat and the ordinary civil court within the local limits of whose jurisdiction the panchayati circle is situated shall have concurrent jurisdiction to try—

- (1) the classes of suits specified in section 57 when the value of the suit exceeds the limit fixed under that section but does not exceed two hundred rupees,

1. Substituted by the A. O. for "L. G."

2. Printed in Vol. I of this Code.

3. Printed in Central Acts, Vol. III, p. 297.

Concurrent
jurisdiction
of pancha-
yats.

Exclusive
Civil
Jurisdiction
of pancha-
yats.

(2) suits for the recovery of the rent of immovable property when the value of the suit does not exceed twenty-five rupees, and

(3) if the [Provincial Government]¹ shall by notification so direct, suits for the recovery of money or movable property other than those specified in section 57, and of higher value than that fixed under sub-section (1) of that section :

Provided as follows :—

(a) in suits instituted before a panchayat if the defendant objects to the trial of the suit by the panchayat, the panchayat shall transfer the same to another panchayat with the consent of the parties, or direct the petitioner to the proper court ;

(b) in suits instituted before the civil court, the court may, unless reason be shown to the contrary, transfer the suit to the panchayat for disposal.

59. (1) Notwithstanding anything contained in the Bengal, Agra and Assam Civil Courts Act, 1887², the Provincial Small Cause Courts Act, 1887³, and the Code of Civil Procedure, 1908, in any area in the Chota Nagpur Division in which a panchayat has been constituted under section 6 or 7, the [Provincial Government]⁴ may by, notification, direct that such panchayat, if three or more members thereof are members of a tribe which has been exempted from the operation of the provisions of the Indian Succession Act, 1865⁵, by an order under section 332 of that Act, shall have jurisdiction, either exclusively or in conjunction with the ordinary civil court,⁶ that of the ordinary civil court, within the local limits of whose jurisdiction the panchayati circle is situated, to try suits of such value as may be specified—

Special powers of
aboriginal
panchayats
in Chota
Nagpur.

(a) for succession to the property of a deceased member, or partition of property belonging to members of any such tribe, and

(b) for succession to any secular or sacerdotal office (including any lands or other emoluments attached thereto) which is filled by tribal custom in any village or group of villages within the panchayati circle :

1. Substituted by the A. O. for "L. G."

2. Printed in Vol. I of this Code.

3. Printed in Central Acts, Vol. III, p. 297.

4. Act X of 1863 has been rep. and re-enacted by the Indian Succession Act, 1925 (XXXIX of 1923), in Central Acts, Vol. VIII, p. 179.

Provided as follows :—

- (a) no member of the panchayat who is not a member of the tribe or tribes concerned shall sit as a member of the panchayat for the trial of any such suit;
- (b) no suit or application shall be entertained by any such panchayat concerning any matter which has been determined by the Deputy Commissioner under sub section 3 of section 74A of the Chota Nagpur Tenancy Act, 1908.

(2) No such suit shall lie unless the property or office which is the subject matter of the suit is situate in or appertains to any village or group of villages within the panchayat's circle.

(3) If the panchayat is unable to execute the decree in the exercise of the powers conferred by section 81 the panchayat shall send the decree for execution to the court which would have had exclusive jurisdiction to try the suit, but for the provisions of this section. Such court shall execute the decree in accordance with the provisions of the Code of Civil Procedure, 1908.

60. No suit shall lie in any panchayat—

- (1) on a balance of partnership account, or
- (2) except under section 59 for a share or part of a share under an intestacy or for a legacy or part of a legacy under a will, or
- (3) by or against [the Crown or servants of the Crown] in their official capacity, or
- (4) by or against minors or persons of unsound mind, unless represented by a guardian recognized by the panchayat, or
- (5) for the assessment, enhancement, reduction, abatement, or apportionment of rent of immovable property, or
- (6) by a mortgagee of immovable property for the enforcement of the mortgage by foreclosure or sale of the property or otherwise, or by a mortgagor of immovable property for the redemption of the mortgage.

61. No suit, except under section 59, shall lie in any panchayat unless at least one of the defendant's resides within the limits of its jurisdiction at the time of the institution of the suit, and the cause of action has arisen wholly or in part within those limits.

62. No suit shall be entertained by a panchayat after the expiration of three years from the date when the right to sue first accrued :

¹. Substituted by the A. O. for "Government or public officers".

Certain suits
not to be
tried by
panchayat

Local limit
of jurisdic-
tion of pan-
chayat.

Limitation
of suits.

(Secs. 65-66)

Provided that the period of limitation for suits specified in Schedule IV when instituted before a *panchayat* shall be the period prescribed in the same schedule in respect of such suits;

Provided further that for a period of one year after the first establishment of a *panchayat*, if a suit in regard to which a *panchayat* has exclusive jurisdiction under section 57, is barred by the provisions of this section but is not barred by the Indian Limitation Act, 1908¹ the suit may be instituted before the ordinary civil court.

63. No *panchayat* shall try any suit in which the matter directly and substantially in dispute has been heard and decided by a court of competent jurisdiction in a former suit between the same parties, or between parties under whom they or any of them claim, or is pending for decision in the same court or in any other court in a previously instituted suit between the same parties or between parties under whom they or any of them claim.

*Res judicata
and pending
suits.*

64. A case or suit before a *panchayat* may be instituted by petition made orally or in writing. If the petition is made orally, the *panchayat* shall record such particulars as may be prescribed, and in the case of suits, the stated value of the claim.

*How case or
suit may be
instituted.*

65. (1) If upon the face of the petition or on examining the petitioner, the *panchayat* is of opinion that the petition is frivolous, or vexatious, or that the suit is barred by limitation it shall dismiss the case or suit by an order in writing.

*Power of
panchayat
to dismiss
or to refuse
to entertain
petition.*

(2) If at any time it appears to the *panchayat*—

- (a) that it has no jurisdiction to try the case or suit;
- (b) that the offence is one for which the sentence which the *panchayat* is competent to pass would be inadequate;
- (c) that the case or suit is of such a nature or of such difficulty that it ought to be tried by a regular court,

it shall direct the petitioner to the proper court.

(3) The *panchayat* may at any time for the purpose of trying any suit, with the consent of the parties thereto co-opt any person approved by the parties in this behalf; and the person so co-opted shall for the aforesaid purpose be deemed to be a member of the *panchayat*.

66. If in any case or suit, before a *panchayat*, the petitioner fails to appear on the date fixed or if in the opinion of the *panchayat* he shows negligence in prosecuting his case or suit, the *panchayat* may dismiss the case or suit for default, and such order of dismissal in a case shall operate as an acquittal:

*Dismissal of
case or suit
for default.*

(Secs. 67-71)

Provided that a panchayat may restore a suit dismissed for default if, within fifteen days from the date of such dismissal, the plaintiff satisfies the panchayat that he was prevented by sufficient cause from appearing.

Proceedings
preliminary
to trial

67. (1) If the petition be not dismissed, the panchayat shall by summons require the accused or the defendant to appear and answer the petition either orally or in writing.

(2) Such summons shall ordinarily be served by any of the chaukidars of the panchayati circle, but the panchayat may in its discretion have it served by any other person.

(3) If the accused or the defendant resides at the time of the issue of the summons outside the panchayati circle, the panchayat may, if it thinks fit, forward the summons to the nearest magistrate who shall cause it to be served as if it were a summons from his own court.

(4) If the accused fails to appear or cannot be found, the panchayat shall report the fact to the nearest magistrate who may issue a warrant with bail for the arrest of the accused, and may forward him, when appearing before him, for trial to the panchayat or release him on bail to appear before it.

68. If the accused appears and claims to be tried by a magistrate, the panchayat shall direct the complainant to file a complaint before the proper court.

69. If the defendant fails to appear, and the panchayat is satisfied that he has received notice of the date fixed for the hearing, the panchayat may decide the suit ex parte:

Provided that any defendant against whom a suit has been decided ex parte may, within thirty days from the date of executing any process for enforcement of the decision, apply, orally or in writing, to the panchayat to set aside the order; and the panchayat, if satisfied that the defendant did not receive due notice of the date of hearing, or was prevented from appearing by any sufficient cause, shall set aside the decision and shall appoint a day for proceeding with the suit.

70. No decision or order of a panchayat shall be set aside under section 66 or section 69 unless notice in writing has been served by the panchayat on the opposite party.

71. (1) Subject to the provisions of clauses (3) and (4) of section 69 the panchayat shall add as parties to a suit any persons whose presence as parties it considers necessary for a proper decision thereof, and shall enter the names of such parties in the register of suits, and the suit shall be tried as between the parties whose names are entered in the said register:

No order to
set aside
with suit
in regard to
opposite
party.

Powers of
panchayat,
in terms of
law.

(Secs. 72-7-f)

'Provided that when any party is added notice shall be given to him and he shall be given an opportunity of appearing before the trial of the suit is proceeded with.

(2) In all cases where a new party appears under the proviso to sub-section (1) during the trial of a suit, he may require that the trial shall begin *de novo*.

(3) If the petitioner or defendant in any suit dies before a decree has been passed and the right to sue still accrues, the suit shall, subject to the provisions of clause (4) of section 60, be proceeded with at the instance of, or against the legal representatives of the deceased petitioner or the deceased defendant, as the case may be.

72. The *panchayat* shall dispose of all cases or suits before it as promptly as possible, and shall if possible try the case and pass orders on the day on which the accused appears or is brought before it, but if that is not possible shall release him on his executing a bond for a sum not exceeding twenty-five rupees to appear before the *panchayat* on any subsequent day or days to which the trial may be adjourned.

Prompt disposal of cases

be adjourned. Section 2, (3) and (4) Attendance
y, by summons, of witness
send for any person to appear and r to produce or
cause the production of any document.
Personal appearance in court

(2) No person who is exempt from personal appearance in court under section 133, sub-section (1) of the Code of Civil Procedure, 1908, shall be required to appear in person before a *panchayat* in a suit.

(3) A *panchayat* shall refuse to summon a witness or to enforce a summons already issued against a witness, where, in the opinion of the *panchayat*, the attendance of the witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances, would be unreasonable.

the circumstances, would be unreasonable.

(5) If any person whom a *panchayat* summons by written order to appear or give evidence, or to produce any document before it, wilfully fails to obey such summons the *panchayat* may take cognizance of such offence and may sentence any person convicted thereof to a fine not exceeding twenty-five rupees.

parties or their agents have sides has been considered, the such sentence or decree as according to good conscience. In so of evidence or procedure.

(Secs. 75-80)

than the procedure prescribed by or under this Act. Every decree or order shall contain such particulars as may be prescribed by rule under this Act.

Opinion of
majority to
prevail
Compromise.

No appeal in
criminal
cases, but
power to
order retrial.

Decision of
panchayat
in civil suits
to be final.

Payment by
instalments.

Payment
of fees.

75. In the event of the members of a panchayat disagreeing, the decision of the majority shall prevail. Should the opinions be equally divided the Sarpanch shall have a second or casting vote.

76. Notwithstanding anything contained in this Act or in any other law for the time being in force, it shall be lawful for a panchayat to decide any case or suit within its jurisdiction in accordance with any compromise agreed to by the parties.

77. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, there shall be no appeal by a convicted person in any case tried by a panchayat:

Provided that the District Magistrate or Sub-divisional Magistrate, if satisfied that a failure of justice has occurred, may of his own motion cancel or modify any order of conviction or compensation made by a panchayat or direct the retrial of any case by a court of competent jurisdiction subordinate to him

78. The decision of a panchayat in every suit shall be final as between the parties to the suit:

Provided that the District Judge may of his own motion cancel or modify the order of the panchayat, or direct the re-trial of the suit by the same or any other panchayat, or by any other court subordinate to him, if he is satisfied that there has been a failure of justice.

79. A panchayat when inflicting a fine or in ordering the payment of a sum of money or the delivery of any movable property may direct that the money be paid or the movable property be delivered by instalments.

80. Notwithstanding anything contained in the Court-Fees Act, 1870,¹

(1) in criminal cases no fees other than the process-fees prescribed in sub-section (3) shall be payable;

(2) (a) in suits a fee of two annas shall be payable if the value of the suit does not exceed five rupees and an additional fee of two annas for every additional five rupees or portion thereof;

(b) such fee shall be paid by the petitioner at the time of the institution of the suit;

1. See the Rules of Procedure of Panchayats in the B. & O. Village Administration Manual, 1932.
2. substituted by the B. & O. Village Administration (Amendment) Act, 1934 (B. & O. Act V of 1934), s. 6.

3. Printed in Vol. I of this Code.

(c) if the claim is decreed in full, the fee shall be realised from the defendant, together with the amount decreed, and paid to the petitioner;

(d) if the claim is decreed in part, a proportionate amount of the fee shall be realised from the defendant and paid to the petitioner;

(e) if the panchayat directs the petitioner to the proper court under clause (a) of the proviso to section 68, or under clause (a) or clause (c) of sub-section (2) of section 65, it shall cause the fee to be refunded to the petitioner;

(3) a process-fee of one anna shall be payable for every summons which a panchayat is asked to issue in a criminal case or a suit.]

81. [All fees, fines and penalties]¹ imposed, and all sums due on bonds and all sums decreed and compensation awarded, under this Act by a panchayat may be realized by the panchayat by the distraint and sale of movable property subject to the conditions and in the manner prescribed in sections 34, 35, 36 and 37 for realization of arrears of the tax.

[82. All sums realized by panchayats as fines, fees or costs under this Act shall form part of the revenues of the Province.]

83. A panchayat shall sit on such dates and at such place or places within the limits of its jurisdiction as may be fixed by it with the approval of the District Magistrate.

84. (1) Each panchayat shall be presided over by a Sarpanch.

(2) The President of the Union Board, if he is a member of the panchayat, shall be Sarpanch of the panchayat.

(3) If the President of the Union Board is not a member of the panchayat, the panchayat shall elect its own Sarpanch.

(4) If the Sarpanch is absent from a sitting of the panchayat the panchayat shall elect one of their number to be Sarpanch.

(5) No business shall be transacted at any sitting by the panchayat unless a member able to record the proceedings is present.

85. No member of a panchayat shall try any case or suit or other proceeding to or in which he is a party or personally interested.

1. Substituted by the Bihar and Orissa Village Administration (Amendment) Act, 1931, (B. & O. Act V of 1931) s. 7 for "All fees and fines".

2. Substituted by the A. O. for the original section 82 which read as follows:-

"Save as otherwise provided in this Act, all fees, fines and penalties realised under this Act shall be credited to the Union Fund of the union in which the panchayat is situated, or, if realized in an area in which Part IV is not in force, to such fund as the Local Government may direct."

Realization
of fees and
fines, etc.

Credit of
fines, fees
and costs

Place of
sitting of
panchayat.

Sarpanch of
the pancha-
yat.

Member of
panchayat
not to try
case or suit
in which he
is personally
interested.

THE BIHAR AND ORISSA

(Secs. 86-89)

[B. & O.A.]

Explanation.—A member of a panchayat shall not be deemed a party or personally interested within the meaning of this section in any case or suit by reason only that he is a member of the Union Board.

Appearance
of parties

86. (1) The parties to cases triable by a panchayat shall appear personally before such panchayat:

Provided that the panchayat if it sees reason so to do, may dispense with the personal attendance of an accused and permit him to appear by agent.

(2) The parties to suits triable by a panchayat may appear by agent.

“Agent” in sub-sections (1) and (2) means a full-time servant or a partner or a relative of the party, whom the panchayat may admit as a fit person to represent a party, and who is authorized to appear and plead for such party:

Provided that no advocate, legal practitioner or person declared to be a tout under section 36 of the Legal Practitioners Act, 1879¹, or person known to the panchayat to be a tout, shall be permitted to appear as an agent.

87. Notwithstanding anything contained in the Legal Practitioners Act, 1879¹; advocates or legal practitioners shall not be permitted to appear before a panchayat.

88. No woman shall, against her will, be compelled to appear before a panchayat as an accused or as a witness.

89. (1) The District Judge and the District Magistrate shall have power at all times to inspect the proceedings and records of a panchayat.

(2) The [Provincial Government]², by an order in writing, may suspend or dissolve any panchayat constituted under section 6 or 7, and may remove any member of a panchayat for misconduct or incapacity, neglect of duty or other sufficient cause:

Provided that if a member of a panchayat is also a member of a Union Board, he will continue to be a member of such Board unless an order has been passed by the District Board under section 13.

1. Printed in Central Acts, Vol. II, p. 573.

2. Substituted by the A. O. for “L. O.”

Legal prac-
titioners not
to appearAppearance
of womenControl by
Provincial
Government.

(Secs. 90-93)

90. The [Provincial Government]¹ shall prescribe²—

- (a) the procedure to be followed by a *panchayat* in any case, suit or proceeding and in the enforcement of its decisions and orders;
 - (b) the method of forming a quorum, and
 - (c) the records and registers to be maintained.

Procedure of pancha- yats.

PART VI

MISCELLANEOUS

91. (1) No member of a Union Board shall be personally liable for any contract made, or expense incurred, by or on behalf of the Board.

(2) Every member shall be personally liable for any wilful misapplication of money entrusted to the Union Board to which he shall knowingly have been a party, and he shall be liable to be sued for the same by the District Board.

Board such and thereunder against a Union Bar to suits in good faith any rule made

93. (J) No suit nor any legal proceeding shall be brought against any Union Board or any of its members or officers, or any person acting under its direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Board, and also (if the suit is intended to be brought against any member or officer of the said Board, or any person acting under its direction) at the place of abode of the person against whom such suit is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit; and unless such notice be proved, the court shall find for the defendant.

No suit to
be brought
until after
one month's
notice of
cause of
action.

(2) Every such action shall be commenced within six months after the accrual of the cause of action, and not afterwards.

(3) If any Union Board or person to whom a notice under sub-section (1) is given shall, before a suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

1. Substituted by the A. O. for "L. G."

² See Rules of Procedure of Panchayats in the B. & O. Village Administration Manual, 1932.

Membership
not a bar to
trial of
cases.

Declaration
of a member
of a Union
Board or
panchayat
to be a
public
servant.
Power of
Provincial
Government
to make
rules.

94. A judge or a magistrate shall not be deemed to be party to, or personally interested in, any case under this Act, within the meaning of section 556 of the Code of Criminal Procedure, 1882, merely because he is a member of the Union Board.

95. Every member of a Union Board or panchayat, and every dasadar or chaukidar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

96. (1) The [Provincial Government]¹ may, after previous publication², make rules³ to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the [Provincial Government]¹ may make rules—

"(a) prescribing the qualifications of voters and members and regulating all elections of members of Union Boards and panchayats under this Act, and determining the authority to decide disputes regarding such elections;

"(b) regulating an election of a President of a Union Board and an election to fill a casual vacancy in this office;

"(c) regulating the power of Union Boards to transfer property;

"(d) prescribing the powers to be exercised by the President or Vice-President of a Union Board;

"(e) regulating the conduct of meetings of a Union Board and the method of forming a quorum;

"(f) prescribing the accounts, registers, returns and records to be kept by Union Boards and panchayats;

"(g) regulating the powers and duties of Union Boards in respect of the matters entrusted to their control;

"(h) prescribing the method in which the assessment under section 31 or 47 is to be made and, under section 31 the method and time of payment of the tax;

"(i) prescribing the method in which the distraint and sale of movable property is to be made, and the exception of movable property from distraint;

1. Substituted by the A. O. for "L. G."

2. As to the procedure for previous publication, see s. 26 of the Bihar and Orissa General Clauses Act, 1917 (B & O. Act I of 1917), printed ante, p. 271.

3. For rules made under this section, see Orissa L. S. R. & O., Vol. I, Pt. VII.

4. For rules under clauses (a), (b) and (c), see the Union Board and Panchayat Elections Rules in the B. & O. Village Administration Manual, 1932.

5. For rules under clause (e), see the Rules of Business for Union Boards, 1932.

6. For rules under clauses (b) and (i), see the Union Board Account Rules.

(Sec. 96)

- ¹(j) prescribing the particulars of petitions to be entered in the registers of *panchayats*;
- ¹(k) regulating the procedure to be followed by *panchayats* and the method of forming a quorum;
- ¹(l) regulating the service of summons by *panchayats*;
- ¹(m) prescribing the fees to be charged by *panchayats* for copies of documents or records and the procedure to be followed in the supply of copies;
- ²(n) prescribing the method of appointment and the duties of *dafadaras* and *chaukidars* and the time and manner of the payment of their salaries and the cost of their equipment;
- ²(o) prescribing the powers and duties of Union Boards in respect of the control to be exercised over *dafadaras* and *chaukidars* within the union; and
- (p) prescribing the processes to be served by *dafadaras* or *chaukidars* and regulating the service of such processes.

1. For rules under clauses (j), (l), (l) and (m), see the Rules of Procedure of Panchayats, in the B. & O. Village Administration Manual, 1932.

2. For rules under clauses (n) and (o), see the B. & O. Chaukidari Rules, *ibid.*

THE BIHAR AND ORISSA

(Schedule)

(E. & O. 47)

SCHEDULE I

*Enactments repealed or amended when the provisions of Part IV are
in force.*

[See section 2 (1)]

1	2	3	4
Year	No.	Short title	Extent of repeal or amendment
1935	I	The Bengal Ferries Act, 1885.	For section 35, the following section shall be substituted, namely :— “35. It shall be lawful for the Provincial Government to order that any public ferry shall be managed by a local authority having jurisdiction over the area or any part of the area in which such ferry is situated, local and such local authority shall have all the powers vested in the Magistrate of the district under this Act except the powers specified in sections 7, 11, and 32 [and thereupon the ferry shall be managed accordingly].”

1. Substituted by the A. O. for “L. G.”
 2. Substituted by the A. O. for “and the Local Government may further order that all or any part of the proceeds of such ferry, and all or any part of the compensation received, under this Act in respect thereof, be paid to such local authority, and thereupon such ferry shall be managed and part of whose revenues and expenditure shall be laid accordingly.”

(Schedule)

Schedule I—Enactments repealed or amended when the provisions of Part IV are in force.

1.	2	3	4
Year	No.	Short title	Extent of repeal or amendment
25	III	The Bengal Local Self-Government Act of 1885.	<p>1. In section 5 for the definition of "local authority" the following definition shall be substituted, namely :—</p> <p>"local authority" means any District Board, Local Board or Joint Committee constituted under this Act, or any Union Board constituted under the Bihar and Orissa Village Administration Act, 1922."</p> <p>2. In sections 18 and 18A, for the words "local board or union committee" the words "or local board" shall be substituted.</p> <p>3. Section 36 and the whole of Chapter II of Part I (sections 37 to 44) shall be repealed.</p> <p>4. At the end of clause (2) of section 52 the following shall be added, namely :—</p> <p>"except when levied by a panchayat appointed under the Bihar and Orissa Village Administration Act, 1922."</p> <p>5. For sub-clause (d) of clause Seventhly of section 53, the following sub-clause shall be substituted, namely :—</p> <p>"(d) any sums assigned by the District Board to a Local Board or to a Union Board constituted under the Bihar and Orissa Village Administration Act, 1922."</p> <p>6. The whole of Chapter III of Part II (sections 56 to 59) shall be repealed.</p>

1. This short title has been changed to the Bihar and Orissa Local Self-Government Act of 1885 by s. 3 (a) of the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923).

2. New sections were substituted for amended ss. 18 and 18A by s. 5, ibid.

THE BIHAR AND ORISSA

[B. & O.]

Schedule I.—Enactments repealed or amended when the provisions of
(Schedule)

Part IV are in force.

1	2	3	4
Year	No.	Short title	Extent of repeal or amendment
1883	III— contd	The Bengal Local Self-Government Act of 1855—contd.	<p>7. In section 62, after the words "under this Act" the words "and to the provisions of the Bihar and Orissa Village Administration Act, 1902" shall be inserted.</p> <p>8. In section 73 the following words and figures shall be omitted, namely "but subject to the provisions of Chapter III of Part C thereof."</p> <p>9. In section 80, the following words shall be inserted at the beginning of the section, namely:— "Subject to the provisions of the Bihar and Orissa Local Administration Act, 1902."</p> <p>10. The whole of Chapter III of Part III (sections 101 to 119) shall be repealed.</p> <p>11. In section 130, the following words shall be omitted, namely:—</p> <ul style="list-style-type: none"> (i) in the first paragraph, the following words "in respect of a Union Committee by a District Board or the Local Board to which the Committee may have been declared" and an order under section 130, be, for the purposes of this section, subordinate, and (ii) the whole of the second and third paragraphs, namely—"When a Local Board makes any order under this section it shall forthwith send to the District Board a copy of the order, with a statement of its reasons for making it and with any explanation which the Union Committee concerned may wish to add."

(Schedule)

Schedule I.—Enactments repealed or amended when the provisions of Part IV are in force.

1	2	3	4
Year	No.	Short title	Extent of repeal or amendment
1895	III—contd	The Bengal Local Self-Government Act of 1885—contd	<p>The District Board may thereupon confirm, modify or rescind the order", and</p> <p>(iii) in the penultimate paragraph the words "or Union Committee".</p> <p>112 In section 131, the words "or Union Committee," occurring in two places, shall be omitted.</p> <p>113. In section 132, the following shall be omitted, namely.—</p> <p>(i) in the first paragraph, the words "or Union Committee," in the four places where they occur;</p> <p>(ii) in the second paragraph, the words "or committee," and</p> <p>(iii) the whole of the last paragraph.</p> <p>14. Section 133 shall be repealed.</p> <p>15. In section 138,—</p> <p>(1) the following shall be omitted, namely:—</p> <p>(i) in the first paragraph, the words "or union committee";</p> <p>(ii) in clause (a) the following words, namely:—</p> <p>"and Committees";</p> <p>(iii) clauses (g) and (g1); and</p> <p>(iv) the whole of the last paragraph;</p> <p>(2) in clause (i) for the words "District Boards, Local Boards and Union Committees" the words "District Boards and Local Boards," shall be substituted.</p>
			1. New sections were substituted for amended ss. 131 and 132 by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), ss 53 and 54, respectively.

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(Schedule)

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Schedule I—Enactments repealed or amended when the provisions of
Part IV are in force.

1	2	3	4
Year	No.	Short title	Extent of repeal or amendment
1885	III—concl'd.	The Bengal Local Self-Government Act of 1885—concl'd.	<p>16. In section 142, for the words "Local Board or Union Committee" and in the words "Union Committee, Local Board, or District Board" the words "District Board or Local Board" shall be substituted.</p> <p>17. In section 144, for the words "local authority" wherever they occur, the words "District Board or Local Board" shall be substituted.</p> <p>18. (1) In section 145, for the words "every local authority" the words "the District Board" and for the words "the District or Union Fund" respectively, the words "the District Fund" shall be substituted.</p> <p>19. In section 146, in the first paragraph, the words "or union committee" and, in the two places where they occur, the words "or committee" shall be repealed, and the word "a" shall be inserted after the word "district board".</p>
1910	1	The Bihar and Orissa Primary Education Act, 1910	<p>(1) To sub-section (3) of section 2 the following shall be added at the end "and in an area constituted a village under the Bihar and Orissa Village Administration Act, 1922, the Union Board of such union, subject to the control of the District Board".</p> <p>(2) To section 13 the following shall be added at the end: "(iii) in a village constituted under the Bihar and Orissa Village Administration Act, 1922, to such percentage as exceeding fifty of the amount imposed under section 16 of the Act as the local authority may fix and shall be recoverable in the same manner as if it were such assessment".</p>

(Schedule)

SCHEDULE II

Enactments repealed or amended when the provisions of Part III are in force.

[See section 2(2)]

1	2	3	4
Year	No.	Short title	Extent of repeal or amendment
1870	-	11 The Village Chaukidari Act, 1870.	The whole except the preamble and sections 1, 49 to 61 (Part II), 66, 67 and 69 and schedules C and D shall be repealed
1871	-	1 The Bengal Village Chaukidari Act, 1871	The whole shall be repealed
1896	-	1 The Bengal Village Chaukidari (Amendment) Act, 1896.	The whole shall be repealed
1892	-	1 The Bengal Village Chaukidari (Amendment) Act, 1892.	The whole shall be repealed
1911	-	1 The Chota Nampur Rural Police Act, 1911.	(1) Sections 3 to 22 shall be repealed (2) In sections 30, 31 and 33 the words "village policeman or" shall be omitted (3) In section 37, for subsection (2) there shall be substituted the following "(2) In particular and without prejudice to the generality of the foregoing powers such rules may prescribe forms for use under section 36." (4) The schedule shall be repealed.

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(Schedule)

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(See section 27)

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SCHEDULE IV

Period of Limitation for certain suits

(See Section 62)

Description of suit	Period of Limitation	Time from which period begins to run
1.	2.	3.
1. For the wages of a house-hold servant, artisan or labourer.	One year Do Do	When the wages accrue or When the food or drink is delivered. When the price becomes payable
2. For the price of food or drink supplied by a keeper of a hotel, tavern or Lodging-house.		
3. For the price of lodgings ..		

BIHAR AND ORISSA ACT VII OF 1922
(THE BIHAR AND ORISSA MUNICIPAL ACT, 1922)

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 392. Passing of property, rights and liabilities to Commissioners of municipalities constituted under Act.
 393. Recovery of sums due at commencement of Act.
 394. Vacation of office by existing Commissioners, Vice-Chairman and Chairman.
 395. Provision for exercise of extraordinary powers

SCHEDULE

THE FIRST SCHEDULE
 Tax on vehicles, horses and other animals

THE SECOND SCHEDULE

Enactments repealed

THE THIRD SCHEDULE

Enactments amended

BIHAR AND ORISSA ACT VII OF 1922

(THE BIHAR AND ORISSA MUNICIPAL ACT, 1922)¹

(22nd November, 1922)

An Act to consolidate and amend the law relating to Municipalities in the Province of Bihar and Orissa

Whereas it is expedient to consolidate and amend the law relating to Municipalities in the Province of Bihar and Orissa;

And whereas the previous sanction of the Governor-General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Bihar and Orissa Municipal Act, 1922.

(2) It extends to the whole of the Province of Bihar and Orissa including the Santal Parganas.

(3) It shall come into force on such date as the [Provincial Government]² may by notification direct³.

(4) Notwithstanding anything contained in sub-section (2), it shall not take effect in any cantonment or part of a cantonment without the consent of the Governor-General in Council previously obtained.

2. (1) The enactments mentioned in the Second Schedule, so far as they are in force in the Province of Bihar and Orissa, are hereby repealed to the extent specified in the fourth column thereof.

(2) The enactments mentioned in the Third Schedule, so far as they are in force in the Province of Bihar and Orissa, are hereby amended to the extent and in the manner specified in the fourth column thereof.

1. LEGISLATIVE. *See the Bihar and Orissa Gazette, 1922, No. 18-42, and Vol. IV.*

2. Substituted by the A. O. for "L. G."

3. The Act was brought into force on the 1st January, 1923, *see notification no. 5670-L. S.-G., dated the 23rd November 1922, published in the Bihar and Orissa Gazette, 1922, Pt. II, p. 1143.*

This Act has been extended to areas transferred to Orissa from the Central Provinces by the Orissa Laws Regulation, 1936 (Reg. I of 1936), s. 11, Sch. IV.

This Act has been declared in force in the districts of Angul by the Angul Laws Regulation, 1936 (Reg. V of 1936), s. 3 (2).

Short title
extent and
commencement

Definitions.

8. In this Act, unless there be something repugnant in the subject or context,—

(1) "building" means any house, hut, shed or other roofed structure, for whatsoever purpose and of whatsoever material constructed, and every part thereof, but does not include a tent, or other portable and merely temporary shelter;

"Cart"

(2) "cart" means a vehicle ordinarily drawn by animals and not ordinarily used for the conveyance of human beings;

"Charitable purpose."

(3) "charitable purpose" includes the maintenance of an educational institution and the hostels attached thereto, which, though wholly or partly self-supporting, is maintained without the purpose of profit;

"Conservancy"

(4) "conservancy" means the removal and disposal of sewage, offensive matter and rubbish;

"Compound"

(5) "compound" means land, whether enclosed or not, which is the appurtenance of a building or the common appurtenance of several buildings;

"Drain"

(6) "drain" includes a sewer, a house-drain, a drain of any other description, a tunnel, a culvert, a ditch, a channel and any other device for carrying off sewage, offensive matter, rain-water or sub soil water;

"Driver"

(7) "driver", when used in relation to vehicles propelled or drawn by men, means a person who propels or draws such vehicle;

"Food"

(8) "food" includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food; and includes flavouring matters and condiment;

"Holding"

(9) "holding" means land held under one title or agreement and surrounded by one set of boundaries:

Provided that, where two or more adjoining holdings form part and parcel of the site or premises of a dwelling-house, manufactory, warehouse or place of trade or business, such holdings shall be deemed to be one holding for the purposes of this Act other than those mentioned in clause (a) of sub-section (1) of section 8²;

Explanation.—Holdings separated by a road or other means of communication shall be deemed adjoining within the meaning of this proviso.

(10) "house-gully" means a passage or strip of land constructed, set apart or utilized for the purpose of serving as a drain or affording access to a latrine, urinal, cesspool or other receptacle for filthy or

"polluted matter to municipal servants or to persons employed in the cleansing thereof or in the removal of such matter therefrom, and includes the air-space above such land,

(11) "hut" includes all latrines, urinals, out-houses and other "Hut," subsidiary buildings on the same holding as a hut;

(12) "the Magistrate" includes the District Magistrate, the ^{"The Magistrate"} magistrate in charge of the subdivision in which a municipality is constituted and any magistrate subordinate to the District Magistrate to whom the District Magistrate has made over any of his duties under this Act;

(13) "market" includes any place where persons periodically assemble for the sale of meat, butter, ghi, fish, fruit, vegetables or live-stock;

(14) "municipality" means any local area declared by or ^{"Municipality"} under this Act to be a municipality;

(15) "occupier" includes an owner in actual occupation of his "Occupier," own land or building;

(16) "offensive matter" means dirt, dung, putrid or putrefying substances, and filth of any kind not included in the term "Offensive matter;"

(17) "officer of the Commissioners" means a person holding "Officer of the Com." for the time being an office created or continued by or under this ^{the Com.} Act, but does not include a Municipal Commissioner or the member ^{municipalities.} of a Committee or Joint Committee constituted under this Act;

(18) "owner" includes—

(a) every person who is entitled for the time being to receive any rent in respect of the land with regard to which "Owner" the word is used, whether from the occupier or otherwise;

(b) a manager on behalf of any such person;

(c) any agent for any such person; and

(d) a trustee for any such person:

Provided that no such manager, agent or trustee shall be liable to do anything required by this Act to be done by the owner, nor shall he be subject to any fine for omitting to do such thing, unless he has sufficient funds in his hands as such manager, agent or trustee to do such thing;

(19) "part of a building" includes any wall, under-ground room or passage, verandah, fixed platform, plinth, staircase or door-step attached to, or within the compound of an existing building or constructed on ground which is to be the site or compound of a projected building;

^{"Part of a building"}

(Sec. 3)

"Platform."

(20) "platform" means any structure which is placed on or covers or projects over any road or any open drain;

"Pony."

(21) "pony" means a horse not exceeding fourteen hands in height;

"Prescribed."

(22) "prescribed" means prescribed by rules made by the Provincial Government under this Act;

"Public place."

(23) "public place" means a space, not being private property, which is open to the use or enjoyment of the public, whether such space is vested in the Commissioners or not;

"Road."

(24) "road" means any road, bridge, footway, lane, square, court, alley or passage which the public, or any portion of the public, has a right to pass along, and includes, on both sides, the drains or gutters and the land up to the defined boundary of any abutting property, notwithstanding the projection over such land of any platform, verandah or other superstructure;

"Rubbish."

(25) "rubbish" means broken brick, mortar, broken glass, kitchen or stable refuse and refuse of any kind whatsoever, included in the term "offensive matter."

"Salaried servant of Government."

(26) "salaried servant of Government" means a whole-time servant of the Crown¹ who receives his salary direct from the Central or a Provincial Government², and includes a manager of an estate under the Court of Wards, but does not include an officer whose services have been lent³ by any Government⁴ to a local authority or a retired servant of the Crown⁵ in receipt of a pension;

"Servant of the Commissioners."

(27) "servant of the Commissioners" means any person in the pay and service of the Commissioners;

"Sewage."

(28) "sewage" means night-soil and other contents of latrines, urinals, cesspools, and drains, and includes polluted water from kitchens, sinks, bath-rooms, stables, cattle-sheds, and other like places;

"The Commissioners."

(29) "the Commissioners" means the persons for the time being appointed or elected to conduct the affairs of any municipality under this Act;

1. Substituted by the A. O. for "L. G."

2. Substituted by *ibid* for "officer of Government".

3. Substituted by *ibid* for "from Government."

4. Substituted by *ibid* for "by Government."

5. Substituted by *ibid* for "retired servant of Government".

(Sec. 4)

¹[(30) "vehicle" means a wheeled conveyance, other than a motor car, capable of being used on a road and includes a tricycle, bicycle, a jinrickshaw and a chhampani ;] "Vehicle."

²[(30A) "motor car" means any vehicle propelled or which may be propelled on a road by electric or mechanical power, either entirely or partially ;] "Motor car."

(31) "water for domestic purposes" shall not include water for cattle, or for horses, or for washing carriages, where the cattle, horses or carriages are kept for sale or hire, or by a common carrier, or water for any trade, manufacture or business, or for building purposes, or for watering gardens, or for fountains, or for any ornamental purpose ; and "Water for domestic purposes."

(32) "year" means a year beginning on the first day of April or on such other date as may hereafter be fixed for any municipality by the [Provincial Government]³ by notification. "Year."

CHAPTER II

CONSTITUTION AND GOVERNMENT OF MUNICIPALITIES

The Creation of Municipalities

4. (1) (a) When the [Provincial Government]³ is satisfied that three-fourths of the adult male population of any town are engaged on pursuits other than agricultural and that such town contains not less than five thousand inhabitants, and an average number of not less than one thousand inhabitants to the square mile of the area of such town, the [Provincial Government]³ may declare its intention to constitute such town, together with or exclusive of any railway station, village, land or building in the vicinity of such town, a municipality, and to extend to it all or any of the provisions of this Act.

Declaration
of intention
to constitut
or alter
limits of
municipality

(b) When the [Provincial Government]³ is satisfied that any part of any municipality, does not fulfil the conditions mentioned above, the Commissioners at a meeting convened for that behalf, the [Provincial Government]³ may declare its intention to withdraw such municipality from the operation of this Act, or to exclude such area from such municipality.

1. Substituted by the B. and O. Motor Vehicles Taxation Act, 1930 (B. & O. Act II of 1930); s. 2 and First Sch. for the original cl. (30).

2. Inserted by *ibid.*

3. Substituted by the A.G.O. for "L. G."

4. For a notification issued under this clause, see the B. & O. Local Statutory Rules and Orders, Vol. I; Pt. VII.

THE BIHAR AND ORISSA

(Secs. 6, 7).

[B. & O. L.

(c) When the Commissioners at a meeting have made a recommendation in this behalf, the [Provincial Government]¹ may declare its intention to include within a municipality any area contiguous to the same, or to subdivide any municipality into two or more municipalities.

(d) When the Commissioners of each of the municipalities concerned at a meeting have made a recommendation in this behalf, the [Provincial Government]² may declare its intention to unite two or more municipalities so as to form one municipality.

(2) Every declaration under this section shall be published in the Gazette, and in such other manner as the [Provincial Government]³ may direct.

(3) If any part of a town or local area affected by any declaration under this section is a cantonment or part of a cantonment, no declaration under this section shall be made.

5. The [Provincial Government]⁴ shall take into consideration any objection submitted through the District Magistrate within six weeks from the date of the publication of a declaration under section 4, by any inhabitant of the town or area, or any rate-payer of the municipality concerned, and in the case of a declaration under clause (a) of sub-section (1) of the said section, by the district board of the district in which the town is situated.

6. The [Provincial Government]⁵ may thereupon, by notice,

(a) constitute the town or any specified part thereof a municipality, and extend to it all or any of the provisions of this Act, or

(b) withdraw the whole area comprised in the municipality from the operation of this Act, or

(c) include the local area or any part thereof in the municipality or exclude it therefrom, or

(d) subdivide the municipality into two or more municipalities, or unite the municipalities, as the case may be.

7. (1) When a municipality is constituted under section 6, those provisions of this Act which are extended to it by the notification shall come into force accordingly, and the remaining provisions shall not apply to the municipality until extended thereto by notification.

1 For notifications issued under the ~~so~~ clauses, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

2 Substituted by the A. O. for "L. G."

3 The words "without the previous consent of the Governor General in Council" omitted by the A. O.

4 For notification issued under this clause see Orissa L. S. R. & C. Pt. VII.

Consideration
of
objections

Constitution
abolition or
alteration of
limits of a
municipality

Application
of Act to a
newly con-
stituted
municipality

(Secs. 8-12)

(2) The [Provincial Government]¹ may make rules for the guidance of the Commissioners and public officers in respect of matters governed by those provisions the operation of which is excluded by sub-section (2).

8. When any local area is included in a municipality by a notification published under section 6, all the provisions of this Act and of any rules, by-laws, notifications, resolutions or orders made thereunder, which immediately before such inclusion were in force throughout such municipality, shall be deemed to apply to such area, unless the [Provincial Government]¹ in and by the notification otherwise directs.

Application
of Act and
subsidiary
orders in
areas
included
within a
municipality

9. When any municipality is subdivided into two or more municipalities by a notification published under section 6, then, notwithstanding anything contained in other sections of this Act, all the provisions of this Act and of any rules, by-laws, notifications, resolutions, or orders made thereunder which, immediately before such subdivision were in force in any part of the original municipality, shall be deemed to be in the same part of the municipality formed by the subdivision, unless the [Provincial Government]¹ in and by the notification otherwise directs.

Continuance
of Act and
subsidiary
orders in
municipali-
ties formed
by subdivi-
sion.

10. When the whole area comprised in a municipality is withdrawn from the operation of this Act, or when any part of such area is excluded from the municipality, by a notification published under section 6, this Act and all rules and by-laws made, orders, directions and notices issued and powers conferred thereunder shall cease to apply to such area or part, as the case may be.

Dis-
continuance
of Act and
subsidiary
orders in
municipali-
ties with-
drawn from
Act, or in
areas
excluded.
Power to
exempt
municipality
from
provisions
of Act
unsuited to
it.

11. (1) If the Commissioners at a meeting represent that any of the provisions of this Act are unsuited to the municipality, the [Provincial Government]¹ may, by notification, except the municipality or any part of it from the operation of any such provision, and therupon the said provision shall not apply to such municipality or part until applied thereto by notification.

(2) While such exception as aforesaid remains in force the [Provincial Government]¹ may, after considering the recommendations of the Commissioners in this behalf, make rules for the guidance of the Commissioners and public officers in respect of matters excepted from the operation of the said provisions.

The Municipal Commissioners

12. There shall be established for each municipality a body of Commissioners, who shall be a body corporate by the name of the Municipal Commissioners of the place by reference to which the

Constitu-
tion and incorpo-
ration of

1. Substituted by the A. O. for "L. G."

THE BIHAR AND ORISSA

(Sects. 13-15)

[B. & O. A.]

Municipal
Com.
missioners,
Number of
Com.
missioners,
and of
elected and
appointed
Com.
missioners

Appoint.
ment of
Com.
missioners

Qualifica.
tions of
voters

municipality is known, having perpetual succession and a common seal, and may by that name sue and be sued.

18. (1) The [Provincial Government] shall by notification fix—
 (a) the total number of Commissioners.
 (b) the number of such Commissioners who shall be elected in the prescribed manner, and
 (c) the number of such Commissioners who shall be appointed and may, after considering the recommendation, if any, of the Commissioners at a meeting, by notification alter any number so fixed.

(2) The total number of Commissioners shall not be less than nor more than forty.

(3) The number of Commissioners to be elected shall not be less than four-fifths of the total number of Commissioners.

14. (1) The [Provincial Government] shall appoint the number of Commissioners fixed in that behalf under clause (c) of sub-section (1) of section 13, and may, if the electorate in any municipality fails within the prescribed time to elect the number of Commissioners fixed in that behalf under clause (b) of that sub-section, appoint Commissioners to complete such number.

(2) The names of the Commissioners elected and appointed shall be published in the [Official Gazette].*

Election of Commissioners

15. (1) Every person shall be entitled to vote at an election of Municipal Commissioners who is registered as a voter.

(2) The following persons shall, if not subject to any of the disqualifications specified in section 16, be entitled to be registered as voters—

(a) every male person who has, within twelve months immediately preceding such date as may be fixed in this behalf by the Commissioners, paid in respect of any municipal taxes or fees imposed under this Act an aggregate sum of one and a half rupees or such lesser amount as may be fixed by the [Provincial Government] at a meeting specially convened for the purpose;

1. Substituted by the A. O. for "L. G."

2 Substituted by ibid for "Gazette".

(Sec. 16)

- (b) every male person who for a period of not less than twelve months immediately preceding the date fixed under clause (a) has been resident within the municipality and who has during twelve months immediately preceding such date paid or been assessed to income-tax;
- (c) every person of either sex who for a period of not less than twelve months immediately preceding the date fixed under clause (a) has been resident within the municipality in any holding in respect of which there has been paid as taxes during twelve months immediately preceding such date an aggregate amount of one and a half rupees or such lesser amount as may be fixed by the [Provincial Government]¹ on the recommendation of the Commissioners at a meeting specially convened for the purpose, and
 - (i) is a barrister, or
 - (ii) holds the certificate of a pleader, mukhtear, revenue agent or sub-overseer, or
 - (iii) holds a licence granted by any Government medical school to practise medicine, or
 - (iv) is a matriculate of any university, or
 - (v) has passed the Sanskrit Title or Madrassa examination held under the authority of Government, or
 - (vi) is a retired, pensioned or discharged officer, non-commissioned officer or soldier, of His Majesty's regular forces.

16. A person shall not be entitled to vote at an election of municipal Commissioners in any municipality, who—

Disqualifications of voters.

- (a) has not attained the age of twenty-one years;
 - (b) is not a British subject or the subject of any State in India;
- Provided that the [Provincial Government]¹ may, * * *², exempt from this disqualification any alien or class of aliens;
- (c) has been adjudged by a competent court to be of unsound mind; or
 - (d) is an undischarged insolvent.

1. Substituted by the A. O. for "L. G."

2. The words "with the approval of the Government of India" omitted by the A. O.

THE BIHAR AND ORISSA
[B. & O.]

(Secs. 17-20),

Qualifications for election as Com. missioner. Formation of wards.

17. A person shall not be qualified for election to be a Commissioner of a municipality unless he is entitled to vote at the election of Commissioners of such municipality.

18. (1) For the purpose of election of Commissioners of a municipality, the [Provincial Government]¹ may by notification—
 (i) divide the municipality into wards, and
 (ii) determine the number of Commissioners to be elected in each such ward.

(2) The [Provincial Government]¹ may after considering the recommendation, if any, of the Commissioners at a meeting alter revise the division into wards and the number of Commissioners to be elected for each ward.

19. For the purpose of election of Commissioners, the [Provincial Government]¹ may, with respect to municipalities generally or to any municipality or class of municipalities in particular, make such rules², consistent with this Act, as it may think fit, to regulate and determine—

- (1) the registration of voters;
- (2) the dates, times and mode of holding elections;
- (3) the authority which shall decide disputes arising under any rules made under this section; and
- (4) any other matter relating to elections in respect of which this Act makes no provision or insufficient provision, and provision is, in the opinion of the [Provincial Government]¹, necessary.

Chairman, Vice-Chairman and President

20. (1) Save as is otherwise provided in this Act, the Commissioners at a meeting shall elect by name one of their number to be Chairman; provided that no salaried servant of Government shall vote in the election or be eligible for election.

(2) Such election shall take place within twenty-one days from the date of the publication of the names of the Commissioners in the [Official Gazette]³ under section 14 (2), or in the case of a vacancy due to any other cause than the expiry of the term of office of the Chairman, within twenty-one days from the date of occurrence of the vacancy.

1. Substituted by the A. O. for "L. G.".
 2. For rules made under this section, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.
 3. Substituted by the A. O. for "Gazette".

Election of Chairman.

21. In any municipality in which section 20 is not in force, or in which the Commissioners have failed to elect a Chairman within the aforesaid period of twenty-one days, the [Provincial Government]¹ may appoint² a Chairman.

22. Notwithstanding anything contained in sections 13 and 14 every Chairman elected or appointed under section 20 or 21, if not already a Commissioner of the municipality of which he has been elected or appointed Chairman, shall, from the date of his election or appointment, during the term of his office enjoy all the rights and privileges, and be subject to all the liabilities and disabilities, of a Commissioner of the municipality to which such election or appointment relates.

23. The Commissioners at a meeting shall elect one of their own number not being a salaried servant of Government to be Vice Chairman.

24. The Chairman shall, for the transaction of the business connected with this Act, or for the purpose of making any order authorized thereby, exercise all the powers vested by this Act in the Commissioners :

Provided that the Chairman shall not act in opposition to, or in contravention of, any resolution of the Commissioners at a meeting, or exercise any power which is directed to be exercised by the Commissioners at a meeting.

25. The Chairman may, with the approval of the Commissioners at a meeting, delegate to the Vice-Chairman or to any other Commissioner all or any of the duties and powers of a Chairman as defined in this Act, and may at any time withdraw or modify the same:

Provided that nothing done by the Vice-Chairman which might have been done under the authority of a delegation from the Chairman, shall be invalid for want of or defect in such delegation if it be done with the express or implied consent of the Chairman and subsequently approved by the Commissioners at a meeting.

26. A Vice-Chairman shall—

(a) during the vacancy in the office of Chairman or the incapacity or temporary absence of the Chairman, perform any of the duties and, when occasion arises, exercise any of the powers of the Chairman; and

(b) at any time perform any duty and exercise, when occasion arises, any power delegated to him by the Chairman under section 25.

Cases in
which
Provincial
Government
may appoint
Chairman.

Status of
elected or
appointed
Chairman
who is not a
Commissioner of the
municipality.

Election of
Vice-
Chairman.

Powers of
Chairman.

Delegation
of duties and
powers to
Vice-
Chairman
or other
Commissioner.

Duties of
Vice-
Chairman.

1. Substituted by the A. O. for "L. G."
2. For a notification appointing a Chairman, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

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(Secs. 27-29)

[B. & O. A.]

Grant of
leave to
Chairman
and Vice-
Chairman,
Election
of President.

27. The Commissioners at a meeting may grant leave in absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year.

28. The Commissioners at a meeting shall elect one of their own number to be President; provided that the [Provincial Government]¹ may by notification except² any municipality from the operation of this section.

Tenure of
office of
Chairman,
Vice-
Chairman,
President
and Com-
missioners.

Tenure of Office, Resignation and Removal

29. (1) Save as otherwise provided in this Act—

(a) an elected Commissioner shall hold office for [five years]³ commencing from the date of the general election of Commissioners in the municipality;

(b) a Commissioner appointed under section 14 shall hold office for [five years]³ or for such shorter period as may be specified in the order appointing him, and such appointment shall be deemed to have been made on the date of the aforesaid general election;

(c) a Chairman, whether elected or appointed, a Vice-Chairman and a President, if any, shall hold office for [five years]³ from the date of his election or appointment, as the case may be, or for the residue of the term of office of the Commissioners whichever may be less.

(2) The abovementioned term shall be held to include any period which may elapse between its expiry and the date of the first meeting of the body of Commissioners newly elected and appointed.

(3) A person ceasing to be Commissioner or to be Chairman, Vice-Chairman or President by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or re-appointment.

"(4) Notwithstanding anything contained in sub-section (1) and subject to the saving mentioned therein, the Provincial Government may, by notification, extend the term of office of the Commissioners and consequently of the Chairman and Vice-Chairman of any Municipality holding office at the commencement of the Bihar and Orissa Municipal (Orissa Amendment) Act, 1919, for such period as they may deem fit.]

1. Substituted by the A. O. for "L. G."

2. For notifications excepting certain municipalities from the operation of this section, see the B. & O. Local Statutory Rules and Orders, Vol. L Pt. VII.

3. Substituted by the B. & O. Municipal (Amendment) Act, 1933 (B. & O. Act IV of 1933) for "three years". This Act came into force on 15-6-33 (see notification No. 4873--L. S. G., dated 1-6-33; B. & O. Gazette 1933, Pt. II, p. 619).

4. Inserted by the Bihar and Orissa Municipal (Orissa Amendment) Act, 1942 (Orissa Act X of 1942), s. 2.

30. (1) If any Commissioner, Chairman, Vice-Chairman or President is, by reason of his death, resignation or removal or otherwise, unable to complete his full term of office, or if a Chairman or Vice-Chairman avails himself of leave granted under section 27, the vacancy so caused shall be filled by the election or appointment, as the case may be, of another person; and the person so elected or appointed shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman, Vice-Chairman or President would otherwise have continued in office or during his absence on leave, as the case may be.

(2) The provisions of sub-sections (1) and (2) of section 20 shall apply to the election of a Chairman under this section.

31. If a Chairman or Commissioner is appointed by official *Ex-officio* designation, the person for the time being holding the office shall be appointed a Chairman or a Commissioner, as the case may be.

32. (1) Notwithstanding anything contained in section 20, the Chairman, the Vice-Chairman and the President, if any, of a municipality shall be deemed to vacate office at the meeting of the Commissioners newly elected and appointed held under the provisions of sub-section (2) of section 20.

(2) The Commissioners at such meeting shall immediately proceed—

- (a) to elect a Chairman,
- (b) to elect a Vice-Chairman, and
- (c) to elect a President :

Provided that if in any municipality section 20 is not in force, or if the Commissioners fail to elect a Chairman, the Chairman shall continue in office until a new Chairman is appointed.

33. (1) An appointed Chairman of a municipality may resign by notifying in writing his intention to do so to the [Provincial Government]¹, and on such resignation being accepted shall be deemed to have vacated his office.

(2) An elected Chairman may resign by laying notice in writing of his intention to do so before the Commissioners at a meeting.

(3) A Vice-Chairman, a President or a Commissioner may resign by notifying his intention to do so to the Chairman who shall forthwith lay such notice before the Commissioners at a meeting.

(4) On a resigⁿn^tation² being accepted, Vice-Chairman, President or Commissioner may be, shall be deemed to have vacated his office.

(5) When a salaried servant of Government, who is a Commissioner is granted leave for a period exceeding three months, or is transferred from the district in which the municipality is situated, he shall be deemed to have vacated his office of Commissioner on the date of his departure on leave or transfer.

Filling of
vacancies
and tenure
of office of
person filling
vacancy.

Vacation of
office of
Chairman,
Vice-
Chairman,
and Presi-
dent after
general
election.

Resignation
of Chairman,
Vice-
Chairman,
President or
Commiss-
ioner.

1. Substituted by the A. O. for "L. G."

(Secs. 34-36)

**Removal of
Chairman
and Vice-
Chairman.**

34. A Chairman appointed under section 21 or elected under section 20 or 30 or a Vice-Chairman may at any time be removed from his office by a resolution of the Commissioners in favour which not less than two-thirds of the whole number of the Commissioners have given their votes at a meeting specially convened for the purpose.

**Removal of
Commiss-
ioners.**

35. (1) The [Provincial Government]¹ may remove any Commissioner elected or appointed under this Act, if such Commissioner is guilty of misconduct in the discharge of his duties, if he is convicted of any such offence, or subjected by a criminal court to any such order, as implies moral turpitude which in its opinion of the [Provincial Government]¹ unfits him to be a Commissioner and if a resolution recommending his removal has been supported by not less than two-thirds of the whole number of Commissioners at a meeting specially convened for the purpose.

(2) The [Provincial Government]¹ may remove any Commissioner—

- (a) if he refuses to act or becomes incapable of acting or is declared insolvent; or
- (b) if he absents himself from four consecutive meetings of the Commissioners without having previously obtained permission from the Commissioners at a meeting; or
- (c) if, in the judgment of the [Provincial Government]¹ recorded in writing, he has become disqualified to continue in office under section 55; or
- (d) if he, being a legal practitioner, acts or appears in an suit or other proceeding on behalf of any other person against the Commissioners, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Commissioners.

(3) If three-fourths of the registered electors of any ward submit a representation to the [Provincial Government]¹ alleging that any Commissioner representing the ward is unfit to continue in office, the [Provincial Government]¹, after making such enquiry as it may think fit, may remove the Commissioner; provided that no Commissioner shall be so removed unless he has held office for a period of one year from the date of his election.

(4) All acts and proceedings of any Commissioner removed under this section shall, if done previously to such removal, be valid and effectual to all intents and purposes.

**Effect of
removal of
a Commis-
sioner.**

36. (1) A Commissioner who has been removed from his office under sub-section (1) or under clause (a) of sub-section (2) of section 35 shall not be elected or re-elected a Commissioner without the consent of the [Provincial Government]¹.

1. Substituted by the A. O. for "L. G."

(Sects. 37-38)

(2) A Commissioner who has been removed from his office in any municipality under clause (b) of sub-section (2) of section 35 shall not be elected or re-elected a Commissioner of that municipality within a period of three years from the date of his removal.

Municipal Officers and Servants

37. (1) The Commissioners at a meeting may, subject to the provisions of this Act and the rules made thereunder, from time to time determine what officers and servants of the Commissioners are necessary for the municipality, and shall fix the salaries and leave allowances to be paid and granted to such officers and servants.

(2) Subject to the scale of establishment decided upon by the Commissioners under sub-section (1), the Chairman shall have power to appoint such persons as he may think fit, and from time to time to remove such persons and appoint others in their place

Provided that—

(i) a person shall not be appointed to an office the salary of which is fifty rupees per *mensem* or more without the sanction of the Commissioners at a meeting, and that an officer or servant whose salary is more than twenty rupees per *mensem* shall not be dismissed without such sanction;

(ii) the creation of any appointment the maximum pay of which is one hundred rupees or more per *mensem*, and the increase of the maximum pay of a sanctioned post to an amount exceeding one hundred rupees per *mensem* shall be subject to the sanction of the [Provincial Government]¹.

[Explanation—"Pay" includes any special or personal pay or any allowance other than a travelling allowance.]

38. (1) The Commissioners, at a meeting specially convened for the purpose, by a resolution in favour of which not less than two-thirds of the Commissioners present at such meeting shall have voted may, subject to the approval of the [Provincial Government], make rules for—

(a) the granting of pensions and gratuities out of the municipal fund; or

(b) the creation and management of a provident or annuity fund, for compelling contribution thereto on the part of their officers and servants, and for supplementing such contribution out of the municipal fund.

Power to frame rules for pensions and gratuities or for the creation of a provident or annuity fund.

(2) The Commissioners at a meeting may from time to time in accordance with such rules—

(i) grant pensions or gratuities, or grant allowances or

1. Substituted by the A.O for "L.G."

THE BIHAR AND ORISSA

(Sects. 39-41)

[B. & O. Ad.]

annuities out of such provident or annuity fund to any of their officers or servants, as they may think fit;

(ii) if they think fit, grant a pension or gratuity to any member of the family of any of their officers or servants who has died from disease or injury contracted in the discharge of a duty which was attended with extraordinary bodily risk.

39. (1) The Commissioners shall contribute to the pension, gratuities and leave allowances of any servant whose services are lent or transferred by Government to the Commissioners.

(2) Such contribution shall be to the extent fixed by Government.

(3) The Commissioners shall not, without the assent of Government, dispense with the services of any servant described in subsection (1) unless they have given Government at least three months' notice.

(4) In this section "Government" means the Government of India or any [Provincial Government].

40. (1) A mohur or other servant of the Commissioners employed to remove or deal with sewage, offensive matter or rubbish shall not withdraw from his duties without the permission of the Commissioners, unless he has given notice in writing not less than one month previously of his intention so to withdraw.

(2) Any mohur or other such person who withdraws from his duties without giving such notice as aforesaid shall be liable to rigorous imprisonment for a term not exceeding one month, and shall forfeit all salary which may be due to him.

41. If any person employed under this Act (not being a public servant within the meaning of section 21 of the Indian Penal Code) accepts or obtains, or agrees to accept or attempts to obtain, from any person for himself or for any other person, any gratification whatever other than legal remuneration, as a reward for doing or forbearing to do any official act, or for showing or forbearing to show in the exercise of his official functions favour or disfavour to any person, or for rendering, or attempting to render any service or disservice to any person with the Commissioners or with any public servant or with any Government¹ in the discharge of his official duties, he shall be punished with imprisonment, either simple or rigorous, as provided in section 53 of the Indian Penal Code, for a term which may extend to three years, or with a fine not exceeding five thousand rupees, or with both.

¹ Substituted by the A. O. for "I. G."

² Substituted by itid for "the Government."

42. (1) The Commissioners at a meeting may make rules consistent with this Act and subject to the approval of the [Provincial Government]¹ as to—

(a) the duties, appointment, leave, fining, suspension and removal of officers and servants of the Commissioners, and

(b) the nature and amount of security to be furnished by different classes of officers or servants of the Commissioners for the proper discharge of their duties.

(2) The [Provincial Government]¹ may make rules² consistent with this Act to prescribe the qualifications of candidates for employment by the Commissioners, and to declare what circumstances shall be a disqualification for continuance of such employment.

Conduct of Business

43. (1) The Commissioners shall meet for the transaction of business (if there be any business to be transacted) at their office, meetings or at some other convenient place, at least once in every month, and as often as a meeting shall be called by the Chairman, or, in his absence, by the Vice-Chairman.

(2) If there be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall, instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.

44. (1) The Chairman, or, in his absence, the Vice-Chairman, shall call a special meeting on a requisition signed by not less than three of the Commissioners.

(2) If the Chairman or the Vice-Chairman fails to call a special meeting within fifteen days after any such requisition has been made, the meeting may be called by the persons who signed the requisition.

45. (1) The President, if any, shall preside at every meeting, and, in the absence of the President, the Commissioners shall choose some one of their number other than the Chairman or Vice-Chairman to preside.

(2) In any municipality which has been excepted from the operation of section 28 the Chairman, or in his absence the Vice-Chairman, or in the absence of both the Chairman and the Vice-Chairman, a Commissioner elected at the meeting shall preside.

¹ Substituted by the A.O. for "L.G."

² For rules under this sub-section, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII, and also see Order L.S.R. & O., Vol. I, Pt. VII.

THE BIHAR AND ORISSA
(B.E.O.)

(Secs. 46-49)

(3) Notwithstanding anything contained in sub-section (1) of section 46, no one who is a candidate for election to the office of Chairman or Vice-Chairman or President shall preside at a meeting at which his election to such office takes place.

Decision of
questions
and casting
vote.

46. (1) All questions which may come before the Commission at a meeting shall be decided by a majority of votes, save as otherwise provided in this Act.

(2) In case of equality of votes, the president of the meeting shall have a second or casting vote.

Quorum and
abjournment
for want
thereof.

47. (1) No business shall be transacted at any meeting of the Commissioners unless such meeting has been called by the Chairman or Vice-Chairman or under section 44 by persons signing a requisition nor unless a quorum be present.

(2) A quorum shall be in any municipality, in which the Commissioners are more than fifteen, five; and in any other municipality a number being not less than one-third of the entire number of Commissioners:

Provided that the quorum for all business on which salaried servants of Government are under the provisions of this Act prohibited from voting, shall be exclusive of such salaried servants.

(3) If at the time appointed for a meeting, or within half an hour thereafter, a quorum is not present, the meeting shall stand adjourned to some future day to be appointed by the president of the meeting, and three days' notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum whatever their number may be.

48. (1) Minutes of the proceedings of all meetings of the Commissioners shall be entered in a book to be kept for the purpose, and shall be signed by the president of the meeting and such book shall be open to the inspection of the tax-payers.

(2) A copy of the minutes of the proceedings of all meetings of the Commissioners shall be forthwith forwarded by the Commissioners to the [Provincial Government] or to such authority as the [Provincial Government]¹ may direct.

Committee

49. (1) The Commissioners at a meeting may appoint Committees to assist them in the discharge of the duties devolving upon them.

¹. Substituted by the A.O. for "L.G."

Minutes of
proceedings.

Commissioners.

them under this Act, within the whole or any portion of the municipality, in regard to all or any of the following subjects, namely—

- (a) finance,
- (b) public health,
- (c) public works,
- (d) education,
- (e) hospitals and dispensaries, and
- (f) any other special subject relating to the purposes of this Act.

(2) The Commissioners at a meeting may delegate to any such Committee any of their powers and duties or withdraw all or any of the powers and duties so delegated.

(3) Each such Committee shall, in the performance of the duties and in the exercise of the powers delegated to it, be liable to all the obligations imposed by this Act on Commissioners in respect of such duties and powers.

(4) All the proceedings of any such Committee shall be subject to confirmation by the Commissioners at a meeting, unless the Commissioners at a meeting in delegating such powers and duties direct that its decision shall be final.

50. (1) A Committee shall consist of not less than three nor more than six Commissioners and of any person of either sex who is not a Commissioner but who may, in the opinion of the Commissioners, possess special qualifications for serving on such Committee : Constitution of Com. members.

Provided that the number of persons appointed on any Committee who are not Commissioners shall not exceed one-third of the total number of the members of such Committee.

(2) All the provisions of this Act applicable to Committees shall apply to such Committee.

^{s, powers,}
shall be

Joint-Committees

51. (1) The Commissioners of any municipality at a meeting may, and when so required by the [Provincial Government]¹ shall, join with any other local authority in constituting out of their respective bodies a Joint-Committee for any purpose in which they are jointly interested, and in delegating to any such Joint-Committee any power which might be exercised by the Commissioners or any of the local authorities concerned.

1. Substituted by the A. O. for "L. G."

THE BIHAR AND ORISSA

(B. & O. Act)

(Secs. 52-55).

(2) Such Joint-Committee may, subject to the approval of the [Provincial Government]¹, from time to time frame rules as to the proceedings of any such Joint-Committee, and as to the conduct of correspondence relating to the purpose for which such Joint-Committee is constituted.

Rules of Business

52. The Commissioners at a meeting shall make rules consistent with this Act and subject to the approval of the [Provincial Government]¹ as to all or any of the following matters :—

- (a) the manner of election of the Chairman, Vice-Chairman and President;
- (b) the time and place of their meetings, the business to be transacted at meetings, and the manner in which notice of meetings shall be given;
- (c) the conduct of proceedings at meetings, the due record of all dissents and discussions; and the adjournment of meetings;
- (d) the custody of the common seal;
- (e) the division of duties among the Commissioners and the powers to be exercised by members to whom particular duties are assigned; and
- (f) the manner of appointment of Committees and Joint-Committees and of their Chairman and the regulation and conduct of their business.

Liabilities and Disabilities of Commissioners

53. (1) No Commissioner shall be personally liable for any contract made, or expense incurred, by or on behalf of the Commissioners.

(2) Every Commissioner shall be personally liable for any wilful misapplication of money entrusted to the Commissioners to which he shall knowingly have been a party, and he shall be liable to be sued for the same.

54. Except as provided in section 55 a Commissioner shall not be allowed any remuneration from the municipal fund except with the sanction of the [Provincial Government].

55. Any Commissioner who, otherwise than with the sanction of the [Provincial Government]¹, knowingly acquires or continues to have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by or on behalf of the Commissioners, or holds any office of profit under the said Commiss-

Personal
liabilities of
Commissioners,

Commissioners not
to be
remunerated.

Penalty
on Commis-
sioner
acquiring
interest in
contract, etc.

¹. Substituted by the A. O. for "L. Q."

(Secs. 56-58)

sioners, shall thereby become disqualified to continue in office as a Commissioner and shall be liable to a fine not exceeding five hundred rupees :

Provided that a Commissioner shall not be so disqualified or liable by reason only of his having a share or interest in—

- (a) a contract entered into between the Commissioners and any incorporated or registered company of which such Commissioner is a member or shareholder ; or
- (b) any lease, purchase or sale of land, or any agreement for the same ; or
- (c) any agreement for the loan of money, or any security for the payment of money only ; or
- (d) any newspaper in which any advertisement relating to the affairs of the municipality is inserted ;

But no such Commissioner shall act as Commissioner or member of a Committee, or take part in any proceedings relating to any matter in which he has a share or interest as described in this proviso.

56. A Commissioner or member of a Committee shall not vote on any matter affecting his own conduct or pecuniary interest, or on any question which regards exclusively the assessment of himself, or the valuation of any property in respect of which he is directly or indirectly in any way interested, or of any property of or for which he is manager or agent, or his liability to any tax.

Commissioners
disqualified
from voting
on certain
questions.

Validity of Acts and Proceedings

57. (1) No act of the Commissioners or of a Committee or Joint-Committee shall be deemed to be invalid only by reason of the existence of a vacancy in any such body.

Presumption
and savings.

(2) Accidental omission to serve notice of a meeting on any Commissioner or member of a Committee or Joint-Committee shall not affect the validity of any such meeting.

CHAPTER III

MUNICIPAL PROPERTY AND FINANCE

Municipal Property

58. All property within the municipality of the nature herein-after in this section specified, other than private property or property maintained [by any Government]¹ or another local authority, shall vest in and belong to the Commissioners, and shall, with all other property of what nature or kind soever which may

Municipal
property.

1. Substituted by the A. O. for "by Government".

become vested in the Commissioners, be under their direction, management and control, that is to say—

- (a) all roads, including the soil, the pavements, stones and other materials thereof, and all drains, bridges, trees, erections, materials, implements and other things provided for such roads;
- (b) all channels, water-courses, springs, tanks, aqueducts, conduits, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps and other waterworks whether made, laid or erected at the cost of the Commissioners or otherwise, and all bridges, buildings, engines, works, materials and things connected therewith, or appertaining thereto, and also any adjacent land appertaining to any such tank;
- (c) all drains, and all works, materials and things appertaining thereto, and other conservancy works;
- (d) all sewage, rubbish and offensive matter collected by the Commissioners from roads, latrines, urinal sewers, cesspools and other places;
- (e) all lamps, lamp posts and apparatus connected therewith or appertaining thereto; and
- (f) all buildings erected by Commissioners and all kind of buildings or other property transferred to the Commissioners [by any Government]¹ or acquired by gift, purchase or otherwise for local public purposes.

59. The [Provincial Government]² may, from time to time, by notification³ exclude any road, bridge, or drain from the operation of this Act or of any specified section of this Act and may cancel such notification wholly or in part:

Provided that if the cost of the construction of the work shall have been paid from the municipal fund such work shall not be excluded from the operation of this Act, or of any specified section of this Act, without the consent of the Commissioners at a meeting.

60. (1) Any hospital, dispensary, school, rest-house, ghat or market within a municipality, not being private property or the property of a religious institution or society, and all medicines, furniture and other articles appurtenant thereto, not being such property, may by order⁴ of the [Provincial Government]⁵ duly published on the spot, be vested in the Commissioners of the municipality; and thereupon all endowments or funds belonging thereto shall be transferred to, and vested in, such Commissioners as trustees for the purposes to which such endowments and funds were lawfully applicable at the time of such transfer:

1. Substituted by the A. O. for "by Government".
 2. Substituted by *ibid* for "L. G."
 3. For notifications under this section, see the B. & O. Local Statuary Rules and Orders, Vol. I, Pt. VII.
 4. For an order under this sub-section, see *ibid*.

Power to
exclude road,
bridge or
drain from
Act.

Transfer of
certain
public
institutions
to the Com-
missioners.

(Sects. 61-64)

Provided that no such order shall be published until one month after notice of the intention to transfer such property shall have been published in the [Official Gazette]¹, and within the municipality in the vernacular language of the district.

(2) If the Commissioners at a meeting held within one month after publication of the notice mentioned in sub-section (1), object to the transfer to themselves of any hospital, dispensary, school, rest-house, *ghat* or market on the ground that their funds cannot bear the charge, then such transfer shall not be made save under such conditions as the Commissioners at a meeting may agree to accept.

61. The Commissioners at a meeting may agree with the person in whom the property in any road, bridge, tank, *ghat*, well, channel or drain is vested to take over the property therein or the control thereof, and after such agreement may declare by notice in writing, put up thereon or near thereto, that such road, bridge, tank, *ghat*, well, channel or drain has been transferred to the Commissioners.

Thereupon the property therein, or the control thereof, as the case may be, shall vest in the Commissioners, and such road, bridge, tank, *ghat*, well, channel or drain shall thenceforth be repaired and maintained out of the municipal fund.

Power to purchase, sell, lease or exchange

62. The Commissioners at a meeting may purchase or take on lease any land for the purposes of this Act, and may sell, lease, exchange or otherwise dispose of any land not required for such purposes or which has been acquired by them for the purpose of being leased.

Transfer
private
roads, etc
to Commis-
sioners.

Power to
purchase,
lease and
sell land.

Power to acquire Property

63. When any land is required for the purposes of this Act, or for the recoupment of the cost of carrying out any such purpose, the [Provincial Government]² may, at the request of the Commissioner at a meeting, proceed to acquire it under the provisions of the Land Acquisition Act, 1894³; and on payment by the Commissioners of the compensation awarded under that Act, and of any other charges incurred in acquiring that land, the land shall vest in the Commissioners.

Acquisitio-
n of land.

Contracts

64. (1) The Commissioners may enter into and perform any contract necessary for the purposes of this Act.

Execution
contracts.

(2) Every contract made on behalf of the Commissioners in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding five hundred rupees, shall be sanctioned

1. Substituted by the A. O. for "Gazette".

2. Substituted by the A. O. for "L. G."

3. Printed in Central Acts. Vol. III, p. 451.

(Secs. 65-67)

by the Commissioners at a meeting, and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners.

(3) Unless so executed, such contract shall not be binding on the Commissioners.

Municipal
and*The Municipal Fund*

65. (1) There shall be constituted for each municipality a fund to be called the municipal fund and there shall be placed to the credit thereof—

(a) all sums received by or on behalf of the Commissioners under this Act or otherwise;

(b) * * * * *

(c) the balance, if any, standing at the credit of the municipal fund of the municipality at the commencement of this Act.

(2) Nothing in this section shall affect any obligation of the Commissioners arising from a trust legally imposed upon or accepted by them.

66. Unless the [Provincial Government]² otherwise directs, all sums received on account of the municipal fund shall be paid into a Government treasury, or into any bank or branch bank used as a Government treasury in or near to the municipality, and shall be credited to an account to be called the account of the municipality to which they belong:

Provided that the Commissioners may invest any money not required for immediate use either in Government securities or in any other form of security which may be approved of by the [Provincial Government]².

67. Except as is otherwise provided in this Act, the Commissioners shall set apart and apply annually out of the municipal fund—

(a) firstly, the liabilities and obligations arising from a trust legally imposed upon or accepted by the Commissioners;

(b) secondly, such sum as may be required for the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914;³

1. Omitted by the A. O. for the original clause which read as follows—
“all fines realized on conviction under the provisions of this Act or the rules or by laws made thereunder, or under any other Act wherein the municipality is named; and”

2. Substituted by the A. O. for “L. G.”

3. Printed in Central Acts, Vol. VI, p. 493.

(Sec. 68)

(c) thirdly, such sum as they are by this Act required to provide for payment of the salaries and allowances of their own establishment, including such contributions as are referred to in section 39.

68. (1) Subject to the charges specified in section 67 the Commissioners at a meeting shall, as far as the municipal fund¹ permits, from time to time cause roads, bridges, tanks, *ghats*, wells, channels, drains, latrines and urinals, being the property of the Commissioners, to be maintained and repaired, and the municipality to be cleansed;

and may, except as is otherwise provided in this Act, and subject to the prescribed restrictions, apply the municipal fund to any of the following purposes within the municipality, that is to say,—

- (i) the construction, maintenance and improvement of roads, tramways, bridges, squares, garden tanks, *ghats*, wells, channels, drains, latrines and urinals;
- ²[(ia) the establishment, maintenance and extension of a drainage or sewerage system;]
- (ii) the supply of water and the lighting and watering of roads;
- (iii) the acquiring and keeping of open spaces for the promotion of physical exercise and education;
- (iv) the planting and preservation of trees;
- (v) the erection and maintenance of offices and other buildings required for municipal purposes;
- (vi) the erection and maintenance of model dwelling houses;
- (vii) the construction, establishment and maintenance of schools, and of hostels to be used in connection with schools, either wholly or by means of grants-in-aid;
- (viii) the establishment of scholarships;
- (ix) the construction, establishment and maintenance of hospitals, dispensaries, leper asylums, *sarais*, poor-houses and *dharmasalas*, either wholly or by means of grants-in-aid;
- (x) the employment of vaccinators and the promotion of vaccination;
- (xi) the employment of health officers, sanitary inspectors, female medical practitioners and midwives;
- (xii) the prevention of the spread of epidemic diseases;

Purposes to
which
municipal
fund is
applicable.

1. For rules regulating the application of the municipal fund, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

2. Inserted by the B. and O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 2.

(See. 68)

(xiii) the construction, establishment and maintenance of veterinary dispensaries, the employment of veterinary practitioners and the appointment and payment of persons possessing the prescribed qualifications to prevent and treat diseases of horses, cattle and other animals;

(xiv) the improvement of the breed of horses and cattle and the breeding of mules;

(xv) the payment of rewards for the destruction of noxious animals or diseased or unclaimed dogs;

(xvi) the establishment and maintenance of a municipal market, or the taking of a market on lease;

(xvii) the establishment and maintenance of dairies and the improvement of the milk supply;

(xviii) the establishment and maintenance of free libraries;

(xix) the maintenance of a fire brigade;

(xx) the holding of fairs and industrial exhibitions;

(xxi) the giving of relief, and the establishment of relief works, in time of scarcity or any general calamity

(xxii) the payment of compensation to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act;

(xxiii) the payment to an officer or servant of the Commissioners of a bonus for good work done or of compensation for loss incurred in the execution of his duty;

(xxiv) the payment of advances to an officer or servant of the Commissioners for the purchase of means of conveyance, or for the purpose of enabling him to acquire and construct a residence for himself;

(xxv) the provision and maintenance of public trams and omnibuses and other means of locomotion; and

(xxvi) all acts and things which are necessary for carrying out the purposes of this Act, or which are likely to promote the safety, health, welfare or convenience of the inhabitants, or expenditure whereon may be declared by the Commissioners, with the sanction of the [Provincial Government]¹, to be an appropriate charge on the municipal fund.

(2) The Commissioners may do all things, not being inconsistent with this Act, which may be necessary to carry out the purposes of this section.

1. Substituted by the A. O. for "L. G."

(Secs. 69-70)

69. Notwithstanding anything contained in section 68—

- (I) all moneys collected, received or recovered by the Commissioners, whether as taxes, fines or otherwise, or for the execution of works, for, or in any respect relating to,—
- (i) the water-supply,
 - (ii) the lighting system,¹
 - (iii) the cleansing of private and public latrines, urinals and cesspools and the provision and maintenance of public latrines and urinals, [and]²

[(iv) the drainage or sewerage system.]

shall, after deduction of such proportionate share of the cost of collection and supervision as the Commissioners at a meeting may fix, be applied in defraying the expenses respectively—

- (a) of making, extending or maintaining the water-supply,
- (b) of making, extending or maintaining the lighting system,³
- (c) of cleansing private and public latrines, urinals and cesspools, and of providing, extending, or maintaining public latrines and urinals, [and]⁴

[(d) of making, extending or maintaining the drainage or sewerage system,]

and in repaying or paying interest on debts incurred in connection with the said purposes respectively :

[Provided that, in any area in which a sewerage system has been established in execution of a scheme sanctioned under Chapter IX and a drainage tax has been imposed, all moneys referred to in clause (I) relating to sub-clauses (iii) and (iv) shall be applied to the objects described in sub-clauses (c) and (d);]

(2) money which has been received by the Commissioners for any specific object shall not be expended on any other object.

70. With the consent of two-thirds of the Commissioners obtained in writing, and with the sanction of the [Provincial Government]⁵, the Commissioners may contribute a portion of the municipal fund towards the expenses incurred in any other municipality or elsewhere for any of the purposes mentioned in section 68, sub-section (I), or towards the salary of any officer of another authority whose services are employed by them; and also towards the expenses of making, maintaining and repairing any work for the improvement of a river or harbour, by whomsoever such work may be done;

Expenditure outside the municipality

1. The word "and" omitted by the B. and O. Municipal (Amendment) Act, 1830 [B. & O. Act III of 1830], s. 3 (I) (a).

2. Inserted by *ibid.* s. 3 (I) (b).

3. Inserted by *ibid.* s. 3 (I) (c).

4. The word "and" omitted by *ibid.* s. 3 (I) (d).

5. Inserted by *ibid.* s. 3 (I) (e).

6. Inserted by *ibid.* s. 3 (I) (f).

7. Inserted by *ibid.* s. (2).

8. Substituted by the A. O. for "L. G."

THE BIHAR AND ORISSA

(Sects. 71-74)

(B. & O. A.)

But no contribution shall be made under this section to any work unless the same is calculated to benefit the inhabitants of the contributing municipality.

*Budget Estimates*Preparation
of budget
estimates.

71. (1) The Commissioners at a meeting, held at least two months before the close of the year, shall prepare in detail budget estimates showing the probable receipts and expenditure during the ensuing year and the objects in respect of which it is proposed to incur such expenditure.

(2) In such estimates the Commissioners shall among other things—

- (a) provide for the payment, as they fall due, of all instalments of principal and interest for which the Commissioners may be liable in respect of loans contracted by them,
- (b) make adequate and suitable provision for such services as may be required for the several duties imposed by this Act, and
- (c) provide for a cash balance at the end of the year of such amount as the [Provincial Government] may from time to time determine with reference to municipalities generally or to any municipality or class of municipalities in particular.

72. (1) Copies of the budget estimates and translations thereof in the vernacular of the district shall be lodged in the office of the Commissioners.

(2) During fourteen days after the said copies and translations have been so lodged in the said office, of which due notice shall be locally published, they shall be open to inspection at all reasonable times by any tax-payer of such municipality who may desire to inspect them.

(3) Any written suggestion which may be deposited in the office of the Commissioners shall be laid before them for consideration at the next meeting.

73. (1) After the expiration of the said fourteen days and after such revision as may appear requisite, the Commissioners at a meeting shall sanction the estimates.

(2) Copies of the estimates as sanctioned shall be submitted forthwith to the [Provincial Government] or to such authority as the [Provincial Government] may direct.

74. The Commissioners at a meeting may, from time to time, revise any estimate of expenditure with the view of providing for any modifications which they may deem it advisable to make in the

¹ substituted by the A. O. for "L. G."

Publication
of budget
estimates.Sanction to
budget
estimates.Action of
Committee
on
Estimates.

(Secs. 75-80)

appropriation of the amount at their disposal, and such revised estimate shall be published and submitted in the manner hereinbefore specified.

75. (1) After the budget estimates of the municipality for the year have been sanctioned under section 73, the Commissioners at a meeting may, subject to the prescribed restrictions, from time to time, by a general or a special resolution, authorize the expenditure of any sum provided in such estimates, or any part of such sum, for the purpose to which it has been assigned in such estimates.

Disbursement of expenditure sanctioned in budget estimates

(2) No order for the payment of money from the municipal fund shall issue unless the expenditure thereof has been authorized by the Commissioners as provided in sub-section (1).

76. When the budget estimates have been sanctioned, the Commissioners shall not incur any expenditure under any of the heads of the said estimates, in excess of the amount sanctioned under that head, without making a provision for such excess by a revision of the budget estimates in the manner specified in section 74.

Expenditure not provided for in the budget estimates,

77. When in the opinion of the [Provincial Government]¹ any municipality is in a state of insolvency as to make its financial position such as to render it unable to meet its liabilities, the Provincial Government, considering in the time being the case, direct that they shall be subject to its sanction and that their revision under section 74 shall be subject to like sanction.

Power of Provincial Government in case of indebted municipalities.

78. If any work is estimated to cost more than ten thousand rupees, the [Provincial Government]¹ may require the plans and estimate of the work to be submitted to it, and if the work is completed to the satisfaction of the [Provincial Government]¹, the same, to be submitted from time to time, in such form as it may prescribe, for its approval.

Power of Provincial Government if work estimated to cost more than ten thousand rupees.

Disposal of Municipal Fund and Property on subdivision, union or withdrawal of Municipalities

79. When two or more municipalities are united or a municipality is sub-divided by a notification published under section 6, the municipal funds or fund, and all property vested in the Commissioners of the municipalities or municipality concerned, shall be consolidated, or apportioned in such manner as the [Provincial Government]¹ may direct.

Apportionment and disposal of municipal property upon a subdivision or union of municipalities

80. (1) When a local area is excluded from a municipality by a notification published under section 6, the [Provincial Government]¹ shall, after consulting the Commissioners, frame a scheme determining what portion of the balance of the municipal fund and

Disposal of fund and property on exclusion of local area

1. Substituted by the A. O. for "L. G."

(Sec. 81)

from municipality or withdrawal of whole area of municipality from Act, other property vested in the Commissioners shall rest in His Majesty [for the purposes of the Province]¹ and in what manner the liabilities of the Commissioners shall be apportioned between the Commissioners and the [Provincial Government]²; and on the publication of such scheme in the [Official Gazette]³ such property and liabilities shall rest and be apportioned accordingly.

(2) When the whole area comprised in any municipality is withdrawn from the operation of this Act by a notification published under section 6, the balance of the municipal fund and all other property at the time of the publication of the notification vested in the Commissioners shall rest in His Majesty [for the purposes of the Province]⁴ and the liabilities of the Commissioners shall be transferred to [the Secretary of State for India in Council]⁵.

* * * * *

Rules as to the Municipal Fund and Property

81. The [Provincial Government]⁶ may make rules⁷ consistent with this Act—

- (1) to regulate the application of the municipal fund to the purposes mentioned in section 68, and generally for the guidance of the Commissioners in all matters connected with the carrying out of the said purposes;
- (2) to regulate the keeping, checking and publication of accounts and the periodical audit thereof;
- (3) to regulate the preparation of the budget estimates, and the expenditure of money for purposes provided therein;
- (4) to provide for the retention of adequate working and closing balances;
- (5) to provide for the preparation of plans and estimates for works to be partly or wholly constructed at the expense of the Commissioners, and to determine the persons by whom, and the conditions subject to which, such plans and estimates are to be sanctioned;

1. Substituted by the A. O. for "for the benefit of the inhabitants of the local area".

2. Substituted by *ibid* for "Secretary of State in Council".

3. Substituted by *ibid* for "Gazette."

4. Inserted by *ibid*.

5. See the Indian Independence Act, 1947.

6. Omitted by the A. O. for the original sub-section which read as follows— "All property vested in His Majesty under this section shall be applied under the orders of the Local Government, to the discharge of the liabilities imposed on the Secretary of State for India in Council thereby, and for the promotion of the safety, health, welfare or convenience of the inhabitants of the area affected."

7. Substituted by the A. O. for "L. G."

8. For rules framed under the various clauses of this section, see the R. O. Local Statutory Rules and Orders, Vol. I, Pt. VII, for amendment of the Rules, see Order L. S. R. & O. Vol. I, Pt. VII.

(Sec. 82)

- (6) to regulate the preparation, submission and publication of returns, statements and reports by the Commissioners, and to prescribe registers and forms;
- (7) to determine the persons by whom orders for payment of money from the municipal fund may be signed, and by whom receipts may be given;
- (8) to regulate any other matter relating to the municipal fund or municipal property in respect of which this Act makes no provision, or insufficient provision, and provision is, in the opinion of the [Provincial Government]¹, necessary.

CHAPTER IV

MUNICIPAL TAXATION

I.—*Imposition of Taxes*

82. (1) The Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given, subject to the provisions of this Act and with the sanction² of the [Provincial Government]³, impose within the limits of the municipality the following taxes and fees, or any of them :—

Power to
impose
taxes

- (a) a tax upon persons in sole or joint occupation of holdings⁴ within the municipality according to their circumstances and property within the municipality;
 - (b) a tax on holdings situated within the municipality assessed on their annual value;
 - (c) a water tax on the annual value of holdings;
 - (d) a lighting tax on the annual value of holdings;
 - (e) a latrine tax on the annual value of holdings;
 - (f) a tax on [the]⁵ vehicles, horses and other animals named in the First Schedule;
 - (g) a tax on dogs kept within the municipality;
 - (h) a fee on the registration of dogs;
 - (i) a fee on the registration of carts;
 - (j) a fee on the registration of vehicles kept or used or plying for hire within the municipality and of animals used to draw them;
 - (k) a fee on vessels moored within the limits of the municipality at ghats or landing places constructed and maintained by the Commissioners; and
 - (l) any other tax, [except a tax on motor cars]⁶.
- * * * * *
- to the proposals for imposing

1. Substituted by the A. O. for "L. O."

2. See Orissa L. S. R. & O., Vol. I, Pt. VII.

3. Inserted by the B. and O. Motor Vehicles Taxation Act, 1930 (B. & O. Act II of 1930), s. 3 and the First Sch.

4. Inserted by *ibid.*

5. The Government of India Act 1935, section 123, provides that the Government of India may by an Order made in Council authorise the Government of Orissa to impose an additional tax on motor cars.

THE BIHAR AND ORISSA

(Secs. 83-85)

(B. & O. Ad.)

which sanction has been given by the [Provincial Government]:¹

Provided that both the taxes mentioned in clauses (a) and (b) shall not be enforced at the same time in the same ward [and that the tax mentioned in clause (c) shall not be enforced in an area in which a sewerage system has been established in execution of a scheme sanctioned under Chapter IX and a drainage tax has been imposed,]² in any municipality.

(2) The Commissioners may, from time to time, at a meeting convened as aforesaid, and in accordance with a scale of fees to be approved by the [Provincial Government], charge a fee in respect of the issue and renewal of any license which may be granted by the Commissioners under this Act and in respect of which no fee is leviable under sub-section (1);

³[(3) Nothing in this section shall authorise the imposition of any tax or fee which the Provincial Legislature has no power to impose in the Province under the Government of India Act, 1935:

Provided that Commissioners who were immediately before the commencement of Part III of the said Act lawfully levying any such tax or fee under this section as then in force, may continue to levy that tax or fee until provision to the contrary is made by the Central Legislature].

83. The tax upon persons shall not be imposed on any person in respect of the occupation of any building which is used exclusively as a place of public worship or of any public burial or burning ground registered under section 248, nor, subject to the provisions of section 91, in respect of the occupation of any holding which contains any building the property [of the Crown]⁴ or of a local authority.

84. [(1) The tax on holdings shall not be imposed at a rate exceeding twelve and a half per centum on the annual value of holdings.]

(2) Any holding which is used exclusively as a place of public worship or religious assemblage, or as a dharmasala, or as a mortuary, or which is duly registered as a public burial or burning ground under section 248 shall be exempted from the tax on holdings.

1. Substituted by the A. O. for "L. G."

2. Inserted by the B. and O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 4.

3. Inserted by the A. O.

4. Substituted by *ibid* for "of Government."

5. Substituted by the Bihar and Orissa Municipal (Orissa Amendment) Act, 1949 (Orissa Act X of 1949), s. 3.

(Sec. 85)

(3) The [Provincial Government]¹ may on the recommendation of the Commissioners at a meeting exempt any holding or part of a holding which is used exclusively for any charitable purpose.

(4) Where the aggregate annual value of all the holdings held by any one owner within a municipality does not exceed six rupees, the tax on holdings shall not be imposed on any of the holdings of the said owner.

85. (1) The imposition of a water tax or of a lighting tax shall be subject to the following restrictions, namely :—

Restrictions
on the
imposition
of the water
and lighting
taxes.

- (a) that the tax shall be imposed only on holdings within an area for the supply of water to which, or for the lighting of which, as the case may be, a scheme has been sanctioned by the [Provincial Government]¹ ;
- (b) that the tax shall not be imposed on land used exclusively for purposes of agriculture, or on any holding consisting only of tanks, or, in the case of the water tax, on any holding no part of which is within a radius, to be fixed by the Commissioners at a meeting, from the nearest stand-pipe or other supply of water available to the public ;
- (c) that the rate on the annual value of holdings at which the tax may be imposed shall not exceed seven and a-half *per centum* in the case of the water tax, or three *per centum* in the case of the lighting tax ;
- (d) that in fixing the rate at which the tax is to be imposed regard shall be had to the principle that the total net proceeds of the tax, together with the estimated income from payments for water or lighting, as the case may be, supplied from the works under special contract or otherwise, shall not exceed the amount required for making, extending or maintaining the water-supply or lighting system, as the case may be, together with an amount sufficient to meet the proportionate share of the cost of supervision and collection as fixed under section 69 and the repayment of, and payment of interest on, any loan incurred in connection with any such supply or system ;
- (e) that the tax shall not be leviable until a supply of water has been provided in the area to be supplied, or until the lamps in the area to be lighted have been lighted, as the case may be, in the execution of a scheme adopted under Chapter IX, nor shall the tax be leviable for any quarter or portion of a quarter antecedent to the provision of such water-supply or lighting;

1. Substituted by the A. O. for "L. G."

(Sec. 86)

¹[(f) that the tax shall not be imposed on any holding or part of a holding used exclusively as a Dharmasala where pilgrims, as defined in section 2 of the Bihar and Orissa Places of Pilgrimage Act, 1920², are allowed accommodation for limited periods free of charges of any kind.]

(2) Nothing in this section shall prevent the Commissioners from making any special arrangement consistent with this Act for a supply of water or electric current or gas to persons residing beyond the radius fixed by the Commissioners at a meeting.

(3) With the sanction of the [Provincial Government], the amount of the water-tax may vary with the distance of holdings from the nearest stand-pipe or other sources of water-supply, and the amount may be higher in the case of premises to which communication pipes are attached than in the case of other premises.

86. The imposition of the latrine tax shall be subject to the following restrictions, namely:—

(a) that the tax shall be imposed only on holdings containing dwelling-houses, latrines, urinals or cesspools, and on holdings containing shops or places of business in which, in the opinion of the Commissioners at a meeting, a latrine, urinal or cesspool is required;

(b) that the Commissioners at a meeting may exempt from payment of the tax any [Dharmasala other than a Dharmasala where pilgrims, as defined in section 2 of the Bihar and Orissa Places of Pilgrimage Act, 1920³, are allowed accommodation for limited periods free of charges of any kind]⁴, jail, reformatory or lunatic asylum in which an establishment is maintained for the cleansing of latrines, urinals and cesspools therin;

(c) that in fixing the rate at which the tax is to be levied regard shall be had to the principle that the total net proceeds of the tax shall not exceed the amount required for cleansing private and public latrines, urinals and cesspools, and for providing, extending or maintaining public latrines and urinals, together with the amount required to meet the proportionate share of the cost of supervision and collection as fixed under section 69 and the repayment of, and payment of interest on, any loan incurred in connection with this purpose;

(d) that the tax shall not be leviable in any area until the Commissioners have made provision for the cleansing

¹ Inserted by the B. and O. Municipal (Orissa Amendment) Act, 1913
(Orissa Act XI of 1913), s. 2.

² Printed ante, p. 301.

³ Substituted by the A. O. for "L. G."

⁴ Inserted by the B. and O. Municipal (Orissa Amendment) Act, 1913
(Orissa Act XI of 1913), s. 3 (i).

(Secs. 86A)

of private latrines, urinals, and cesspools within such area, nor shall the tax be leviable for any quarter or portion of a quarter antecedent to the making of such provision.;

(e) that the tax on any holding the valuation of which does not exceed twenty-five rupees shall not be more than three rupees per annum, and that the rate of the tax on any other holding shall not exceed the rate specified in sub-section (1) of section 84;

[(f) that the tax shall not be imposed on any holding or part of a holding used exclusively as a *Dharmasala* where pilgrims, as defined in section 2 of the Bihar and Orissa Places of Pilgrimage Act, 1920¹, are allowed accommodation for limited periods free of charges of any kind.]

[86A. (1) The imposition of a drainage tax shall be subject to the following restrictions, namely :—

Restrictions
on the
imposition
of a drainage
tax.

(a) the tax shall be imposed only on holdings within an area for which a drainage or sewerage scheme has been sanctioned under Chapter IX ;

(b) that the tax shall not be imposed on land used exclusively for purposes of agriculture, or on any holding consisting only of tanks ;

(c) that the rate on the annual value of holdings at which the tax may be imposed shall not, without the previous sanction of the [Provincial Government]², exceed seven and-a-half per centum ;

(d) that in fixing the rate at which the tax is to be imposed regard shall be had to the principle that the total net proceeds of the tax shall not exceed the amount required for making, extending or maintaining the drainage or sewerage system and, in any area in which a sewerage system has been established in execution of a scheme sanctioned under Chapter IX, the amount required for the cleansing of private and public latrines, urinals and cesspools and public water closets and the provision and maintenance of public latrines, urinals and water closets, together with an amount sufficient to meet the proportionate share of the cost of supervision and collection as fixed under section 69 and the repayment of, and payment of interest on, any loan incurred in connection with any such drainage or sewerage system ; and

(e) that the tax shall not be leviable in any area until a drainage or sewerage system has been established

1. Inserted by the B. and O. Municipal (Orissa Amendment) Act, 1943 (Orissa Act XI of 1943), s. 3 (ii).

2. Printed ante, p. 301.

3. Inserted by the B. and O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 5.

4. Substituted by the A. O. for "L. G."

(Secs. 89-91)

notice has been given, and with the sanction of and subject to the conditions laid down by the [Provincial Government]¹, impose a consolidated tax, at such rate as they deem fit, assessed on the annual value of holdings situated within the municipality.

(2) Such consolidated tax shall be payable in such proportions by the owners and occupiers of holdings as the Commissioners, with the approval of the [Provincial Government]¹, may determine.

II—ASSESSMENT OF TAXES

(A)—Assessment of Taxes on Persons

89. When it has been determined that a tax shall be imposed on persons in sole or joint occupation of holdings within the municipality, according to their circumstances and property within the municipality, the Commissioners, after making such inquiries as may be necessary, shall cause to be prepared an assessment list which shall contain the following particulars, and any others which the Commissioners may think proper to include :—

- (a) the name of the road in which the holding is situated ;
- (b) the number of the holding on the register ;
- (c) the name of the person or persons in sole or joint occupation of the holding, who is or are liable to assessment ;
- (d) a description of the holding, and of the property within the municipality, and the profession or business of the person or persons assessed ;
- (e) the amount of annual assessment ;
- (f) the amount of quarterly instalment ; and
- (g) if any person in occupation of the holding is exempted from assessment, a note to that effect.

90. Save as is herein otherwise provided, every assessment of the tax upon persons shall take effect from the beginning of the year next following that in which the notice required by section 115 is published, and shall be valid for three years and until the beginning of the year next after the date on which a new assessment list may be published, or until the assessment list be revised and amended :

Provided that, when this Act is extended to any place, the first assessment may take effect from the beginning of the quarter next following that in which the said notice is published.

91. In any municipality in which a tax on persons is imposed, a rate, not exceeding ten per centum, may be assessed on the annual value of any holding situated within the municipality, belonging to the Government or a local authority.

Assessment
list to be
prepared.

Duration
assessment.

Exception
case of oc-
cupation of
holdings
belonging
to Govern-
ment or a
local
authority.

1. Substituted by the A. O. for "L. G."

2. Substituted by *ibid* for "of Government."

(Secs. 87-88)

within such area in execution of a scheme sanctioned under Chapter IX, nor shall the tax be leviable for any quarter or portion of a quarter antecedent to the establishment of such system;

¹[(f) that the tax shall not be imposed on any holding or part of a holding used exclusively as a Dharmashala where pilgrims, as defined in section 2 of the Bihar and Orissa Places of Pilgrimage Act, 1920², are allowed accommodation for limited periods free of charges of any kind.]

(2) Nothing in this section shall prevent the Commissioners from making any special arrangement consistent with this Act for the extension of a drainage or sewerage system to holdings situated beyond the radius fixed by the Commissioners at a meeting.

(3) The Commissioners may with the sanction of the [Provincial Government]³ exempt classes of holdings and holdings in particular areas from liability to the drainage tax or may assess the said tax on such holdings at rates varying in the prescribed manner.]

Compounding
of latrine
tax.

87. (1) The Commissioners at their discretion may compound for any period not exceeding one year, with the person liable to pay the latrine tax on any railway premises or on any premises used as a factory, dockyard, workshop, coolie-depot, school, hospital, market, court house, jail, reformatory, lunatic asylum or other similar place, for a certain sum to be paid by such person in lieu of the tax or, in the case of such premises or places, may, in lieu of levying the tax on the annual value of the holding, levy it at a rate per head to be fixed by the Commissioners at a meeting, on the number of persons living within or habitually resorting to such premises or places.

(2) The Commissioners may by a notice in writing require the owner or occupier of any such place to furnish, within a time to be specified in the notice, a statement of the number of persons residing in, or habitually resorting to, such place.

(3) Any owner or occupier of such place who fails to furnish such statement within the time specified in such notice, after being required to furnish the same by the Commissioners, shall be liable to a fine not exceeding one hundred rupees.

Power to
impose
consolidated
tax.

88. (1) Notwithstanding anything contained in the foregoing sections, the Commissioners, in lieu of imposing separately any two or more of the taxes described in section 82, sub-section (1), clauses (b), (c), (d) and (e), [or, subject to the proviso to sub-section (1) of section 82, any one or more of the said taxes and a drainage tax] may, at a meeting convened expressly for the purpose, of which due

1. Inserted by the B. and O. Municipal (Orissa Amendment) Act, 1943 (Orissa Act XI of 1943), s. 4.

2. Printed ante, p. 301.

3. Substituted by the A. O. for "L. G."

4. Inserted by the B. and O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 4.

(Secs. 83-91)

notice has been given, and with the sanction of and subject to the conditions laid down by the [Provincial Government]¹, impose a consolidated tax, at such rate as they deem fit, assessed on the annual value of holdings situated within the municipality.

(2) Such consolidated tax shall be payable in such proportions by the owners and occupiers of holdings as the Commissioners, with the approval of the [Provincial Government]¹, may determine.

II—ASSESSMENT OF TAXES

(A)—Assessment of Taxes on Persons

89. When it has been determined that a tax shall be imposed on persons in sole or joint occupation of holdings within the municipalities and property within the same, the Commissioners shall make such inquiries as may be required and prepare an assessment list which shall contain the following particulars, and any others which the Commissioners may think proper to include :—

Assessment list to be prepared.

- (a) the name of the road in which the holding is situated ;
- (b) the number of the holding on the register ;
- (c) the name of the person or persons in sole or joint occupation of the holding, who is or are liable to assessment ;
- (d) a description of the holding, and of the property within the municipality, and the profession or business of the person or persons assessed ;
- (e) the amount of annual assessment ;
- (f) the amount of quarterly instalment ; and
- (g) if any person in occupation of the holding is exempted from assessment, a note to that effect.

90. Save as is herein otherwise provided, every assessment of the tax upon persons shall take effect from the beginning of the year next following that in which the notice required by section 115 is published, and shall be valid for three years and until the beginning of the year next after the date on which a new assessment list may be published, or until the assessment list be revised and amended :

Duration of assessment.

Provided that, when this Act is extended to any place, the first assessment may take effect from the beginning of the quarter next following that in which the said notice is published.

91. In any municipality in which a tax on persons is imposed, a tax on persons may be imposed on the annual property [of the person] payable by the person.

Exception in case of occupation of holdings belonging to Government or a local authority.

1. Substituted by the A. O. for "L. G."

2. Substituted by ibid for "of Government."

THE BIHAR AND ORISSA

(B. & O. Act

(Sects. 92-98)

Limit of
assessment.

Powers of
exemption.

Power to
reduce
assessment
in altered
circum-
stances

Power to
alter
assessment.

Procedure
on change of
occupation.

Assessment
on vacant
holdings
when to
cease

92. The amount assessed upon any person in respect of the occupation of any holding for the purpose of the tax on persons shall not be more than [two hundred rupees] per annum.

93. (1) The Commissioners may exempt from assessment any person who may by them be deemed too poor to pay the tax on persons.

(2) The [Provincial Government]² may, on the recommendation of the Commissioners at a meeting, exempt any person in sole or joint occupation of a holding which is used exclusively for charitable purposes.

94. If any person mentioned in the assessment list has, at any time after the publication thereof, ceased to occupy any holding in respect of the occupation of which he has been assessed, or if the means and property in respect of which he has been so assessed have been reduced, the Commissioners may on his application exempt him from his assessment, or may revise the same; and such exemption or revision shall take effect from such date as the Commissioners may direct.

95. (1) The Commissioners may, at any time after the publication of the notice required by section 115, assess any person who was without authority omitted from the assessment list, or whose liability to assessment has accrued thereafter, and may enhance any assessment which appears to them to be inadequate, and to have been so made owing to mistake or fraud.

(2) Any assessment or enhancement made under this section shall take effect from the beginning of the quarter next following that in which such assessment or enhancement is made.

96. The Commissioners may at any time substitute for any name mentioned in the assessment list the name of any new occupier or joint occupier of a holding, and may assess the tax on such person, and such person shall be liable to pay such assessment from the date on which his occupation of the holding commenced.

97. If any holding becomes vacant in course of the year, the assessment on account of the occupation of such holding shall cease to have effect from the first quarter next following that in which it becomes vacant.

(Secs. 99-102)

(2) If there be on the holding a building or buildings, the actual cost of erection of which can be ascertained or estimated and which is or are not intended for letting or for the residence of the owner himself, the annual value of such holding shall be deemed to be an amount which may be equal to, but not exceed, seven and-a-half per centum on such cost, in addition to a reasonable ground rent for the land comprised in the holding :

Provided that, where the actual cost so ascertained or estimated exceeds one lakh of rupees, the percentage on the annual value to be levied in respect of so much of the cost as is in excess of one lakh of rupees shall not exceed one-fourth of the percentage determined by the Commissioners under section 104.

(3) The value of any machinery or furniture which may be on a holding shall not be taken into consideration in estimating the annual value of such holding under this section.

99. For the purposes of, and subject to, clause (2) of section 3—

(a) if a question arises whether any property is included within one holding, the decision thereof shall rest with the Commissioners at a meeting;

(b) to in in in under one title or agreement.

100. (1) Any tax which is assessed on the annual value of holdings, other than the latrine tax, shall, subject to the provisions of sections 133 and 134, be payable by the owners of holdings within the municipality.

(2) The latrine tax shall, subject to the provisions of section 135 be payable by the persons in actual occupation of holdings within the municipality.

101. When it has been determined to impose any tax to be assessed on the annual value of holdings, the Commissioners, after making such inquiries as may be necessary, shall determine the annual value of all holdings within the municipality as hereinafter provided, and shall enter such value in a valuation list.

102. The Commissioners, in order to prepare the valuation list, may, whenever they think fit, by notice require the owners or occupiers of all holdings to furnish them with returns of the rent or annual value thereof and a description of the holdings containing such particulars as the Commissioners may direct; and the Commissioners, or any person authorized by them in writing in that behalf, at any time between sunrise and sunset, may enter, inspect and measure any such holding after having given forty-eight hours' previous notice of their intention to the occupier thereof:

Penalty for
default in
furnishing
return.

Provided that where an assessor is appointed, such assessor shall not be competent to authorize any other person to enter, inspect and measure any such holding.

103. (1) Whoever refuses or fails to furnish any such return or description for the space of one week from the day on which he has been required to do so, or knowingly furnishes a false or incorrect return or description shall be liable to a fine not exceeding twenty rupees and to a further daily fine not exceeding five rupees for each day during which he omits to furnish a true and correct return.

(2) Whoever hinders, obstructs or prevents any Commissioner, or any person appointed by the Commissioners, as aforesaid, from entering or inspecting or measuring any such holding shall be liable to a fine not exceeding two hundred rupees.

Determina-
tion of rate
of tax on
holding.

104. Subject to the provisions of section 84, the Commissioners, at a meeting to be held before the close of the year next preceding the year to which [any] tax which is assessed on the annual value of holdings will apply¹, shall determine the percentage on the valuation of holdings at which the tax shall be levied, and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded, and until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the tax will be levied from the beginning of the next year :

Provided that, when this Act is first extended to any place, the first tax may be levied from the beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting;

Provided further that, where the amount standing to the credit of the Commissioners in the municipal fund in any municipality is in the opinion of the [Provincial Government]² insufficient to meet the liabilities of the Commissioners, no decrease shall be made in the rate of any tax levied by them without the sanction of the [Provincial Government]².

105. As soon as possible after the percentage at which the tax is to be levied for the next year has been determined under the list preceding section, the Commissioners shall cause to be prepared an assessment list, which shall contain the following particulars as any others which the Commissioners may think proper to include:-

- (a) the name of the road in which the holding is situated;
- (b) the number of the holding on the register;
- (c) a description of the holding;
- (d) the annual value of the holding;
- (e) the name of the owner and occupier;

^{1.} Substituted by the B. and O. Municipal (Amendment) Act, 1939 (B. & O. Act III of 1939), s. 7 for "the tax will apply".

^{2.} Substituted by the A. O. for "L. G."

Preparation
of assess-
ment list.

(Sec. 107)

- (f) the amount of tax payable for the year,
- (g) the amount of quarterly instalment; and
- (h) if the holding is exempted from assessment, a note to that effect.

106. (1) New valuation and assessment lists shall ordinarily be prepared, in the same manner as the original lists, once in every five years.

Revision and duration of list

(2) Subject to any alteration or amendment made under section 107 and to the result of any application under section 116, every valuation and assessment entered in a valuation or assessment list shall be valid from the date on which the list takes effect in the municipality and until the first day of the April next following the completion of a new list.

107. (1) The Commissioners may from time to time alter or amend the assessment list in any of the following ways —

Amendment and alteration of list

- (a) by entering therein the name of any person or any property which ought to have been entered, or any property which has become liable to taxation after the publication of the assessment list under section 115;
- (b) by substituting therein for the name of the owner or occupier of any holding the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the holding;
- (c) by enhancing the valuation of, or assessment on, any holding which has been incorrectly valued or assessed by reason of fraud, misrepresentation or mistake;
- (d) by re-valuing or re-assessing any holding the value of which has been increased by additions or alterations to buildings;
- (e) where the percentage on the annual value at which any tax is to be levied has been altered by the Commissioners under the provisions of section 104, by making a corresponding alteration in the amount of tax payable in each case;
- (f) by reducing the valuation of any holding the owner or occupier of which has wholly or partially discontinued the use of the value of the same;
- (g) by correcting any clerical or arithmetical error.

(2) The Commissioners shall give at least one month's notice to any person interested, of any alteration which they propose to make under clauses (a), (b), (c) or (d) of sub-section (1), and of the date on which the alteration will be made.

(3) The provisions of sections 116 to 119 applicable to objections shall, so far as may be, apply to any objection made in pur-

balance of a notice issued under sub-section (2) and to any application made under clause (f) of sub-section (1).

(4) Every alteration made under sub-section (1) shall be signed by the Chairman and, subject to the result of an application under section 116, shall take effect from the date on which the next instalment falls due, but the Commissioners by such alteration shall not be deemed to have made a new or revised assessment list.

108. (1) Whenever the title to any holding is transferred both the transferor and the transferee shall, within three months after the execution of the instrument of transfer, or, if no such instrument is executed, within three months after the transfer is effected, give notice in writing of such transfer to the Chairman.

(2) In the event of the death of the person in whom such title vests, the person to whom, as heir or otherwise, the title of the deceased is transferred, by descent or devise, shall, within one year from the death of the deceased, give notice in writing of such transfer to the Chairman.

(3) Whoever contravenes the provisions of sub-section (1) or (2) shall be liable to a fine not exceeding ten rupees.

109. (1) If any house belongs to one owner and the land on which it stands and any adjacent land which is usually occupied therewith belongs to another, the Commissioners may value such house and land together, and may impose thereon one consolidated tax.

(2) The total amount of the tax shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land such proportion of the tax so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

110. Whenever, from the circumstances of the case, the levy of a tax on any holding in the municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same:

Provided that such reduction or remission shall not, unless renewed by the Commissioners at a meeting, have effect for more than one year.

111. (1) When any holding has been unoccupied and unproductive of rent for sixty or more consecutive days during any year, and a written notice of the fact has been given to the Commissioners, they shall remit, and, if the tax has been paid, shall refund three-fourths of so much of the tax of that year as may be proportionate to the number of days the said holding has remained so unoccupied.

Notice to
Chairman of
transfer of
title to
holding

Power to
assess upon
house con-
solidated
tax for
house and
land on
which it
stands.

Power of
Commis-
sioners in
cases of
excessive
hardship.

Remission
or refund on
account of
vacant hold-
ing.

(Sects. 112-113)

(2) The notice referred to in sub-section (1) shall be given during the period in which the holding is unoccupied and unproductive of rent, and the amount of tax to be remitted or refunded shall be calculated from the date of the delivery of such notice.

(3) No refund of any amount under sub-section (1) shall be made unless the application is made within six months from the date of payment.

(4) The burden of proving the facts entitling any person to claim relief under this section shall be upon him.

(5) For the purposes of this section neither the presence of a caretaker, nor the mere retention in an otherwise unoccupied dwelling house of the furniture habitually used in it, shall constitute occupation of the house.

(6) For the purposes of this section a house shall be deemed productive of rent if let to a tenant who has a continuing right of occupation thereof, whether it is actually occupied by such tenant or not.

112. When a notice of the latrine tax, or refund of the same, is given, and the person to whom the notice is given, fails to give notice of re-occupation, shall be liable to a fine not exceeding three times the amount of tax payable quarterly on such holding.

Penalty for failure to give notice of re-occupation.

(C)—General Provisions relating to Assessment

113. (1) If at any time it appears to the [Provincial Government]¹ that the assessment made in any municipality by the Commissioners, or by an assessor appointed under section 37, is insufficient or inequitable, the [Provincial Government]¹ may, by an order in writing, require the Commissioners of such municipality to revise and amend such assessment or to show cause against such order, within a time to be specified therein.

Appointment of assessor of municipal taxes.

(2) If the Commissioners fail to comply with such order, or if, in the opinion of the [Provincial Government]¹, the revised and amended assessment is insufficient or inequitable, the [Provincial Government]¹ may, by an order in writing, require the Commissioners to pay all the taxes for such municipality, as specified in such order.

(3) Such order shall fix the pay of the assessor and the cost of his establishment, and such pay and cost shall be paid monthly by the Commissioners.

(4) An assessment made by an assessor appointed under section (2) shall, when completed, rescind and take the place of assessment which was held to be insufficient or inequitable.

1. Substituted by the A. O. for "L.O."

Qualifications and powers of assessors and manner of assessment.

Publication of notice of assessment.

Application for review.

Hearing and determination of applications by Committees.

Limitation of time for application for review.

Assessment to be quiesced only under Act.

Office hours for

114. An assessor appointed by the Commissioners, whether under sub-section (2) of section 113 or otherwise, shall have such qualifications and shall frame the assessment in such manner, as may be prescribed, and shall exercise all the powers of assessment by this Act in the Commissioners.

115. (1) When the assessment list mentioned in section 8 section 105 has been prepared or revised, the Chairman shall, the same, and shall give public notice, by beat of drum and placards posted up in conspicuous places throughout the municipality of the place where the said list may be inspected.

(2) The Chairman shall also, in all cases in which any property is for the first time assessed or the assessment is increased, give notice thereof to the owner or occupier of the property, if known.

116. (1) Any person who is dissatisfied, with the amount assessed upon him or with the valuation or assessment of any holding, or who disputes his occupation of any holding, or his liability to be assessed, may apply to the Commissioners to review the amount of assessment or valuation, or to exempt him from the assessment or tax.

(2) When an assessor has been appointed, notice of every such application shall be given by the Commissioners to the assessor.

117. (1) Every application presented under the last preceding section shall be heard and determined by a Committee consisting of not less than three Commissioners, provided that no Commissioner shall be a member of the Committee appointed to hear applications from the ward for which he was elected.

(2) Such Committee, after taking such evidence and making such inquiry as it may deem necessary, may pass such order as it thinks fit in respect of such application.

(3) The decision of the Committee, or of a majority of the members thereof, in such cases shall be final.

118. Unless good cause is shown to the satisfaction of such Committee for extending the time allowed and save as is otherwise expressly provided in this Act, no such application shall be received after the expiry of one month after the public notice referred to in sub-section (1) of section 115 or after the service of the special notice referred to in sub-section (2) of the said section, whichever is later.

119. No objection shall be taken to any assessment or valuation in any other manner than in this Act is provided.

III.—Recovery of Taxes

120. By notification to be posted up in their office the Commissioners shall declare at what hours of each day (not being a Sunday or other recognized holiday) the office shall be open for the receipt of money and the transaction of business.

(Sects. 121-124)

121. (1) The amount due by any person on account of the tax on persons, or of any tax on the annual value of holdings, shall be deemed to be the amount entered in the lists, the notice relating to which is published under section 115, unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act; in which case the amount to which the assessment or rating is so altered shall be deemed to be the amount due. Tax payable in advance.

(2) Such tax shall be payable in quarterly instalments, and every such instalment shall be deemed to be due on the first day of the quarter in respect of which it is payable.

122. For all sums paid on account of any tax under this Act a receipt shall be given to the person on account of which it is paid by the collector, or by some other officer to grant such receipts. Receipts to be given.

123. (1) Within fourteen days of the first day of the quarter, the Commissioners shall notify by public proclamation, or in such manner as they may consider suitable, the date on which an instalment of the tax becomes due. Notice of demand to be presented.

(2) If the sum due on account of any tax is not paid within fourteen days from the date on which it became due, the Commissioners shall cause to be served on the person liable to pay the same a notice in the prescribed form:

Provided that—

- (a) no notice shall be served more than six months after any sum has become due; and
- (b) no charge shall be made in respect of the service of such notice.

(3) Such notice shall be signed by the Chairman or an officer authorized in that behalf, and shall be served by a person authorized to receive payment.

124. If any person after service upon him of such notice does not, within fifteen days of the service of such notice or from the date of any order made on an application for review under section 118, pay the sum due, either to the Commissioners at their office or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same, the amount of the arrear due, with costs according to the prescribed scale of fees, may at any time within six months after the date of service of the said notice, or of the order made on an application for review as aforesaid, be levied by distress and sale of any movable property belonging to the defaulter (except ploughs, plough-cattle, tools or implements of agriculture or trade and articles required for worship or prayer) wherever found, or of any movable property belonging to any other person (subject to the same exceptions) which may be found within the holding in respect of which such defaulter is liable to such tax: Levy by distress on failure to pay tax.

(Sects. 125-127)

Provided that, when it holding in respect of which the defaulter less, and the movable property distrusted by the Commissioners to have been it shall be released;

Provided also that if the said property or any part thereof belongs to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

Distress how to be made

125. (1) Every warrant of distress and sale under the last preceding section shall be issued by the Commissioners, and shall be in the prescribed form.

(2) Distress shall be made by actual seizure of movable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.

(3) Such officer shall make an inventory of all movable property seized under the warrant, and shall give not less than ten days' previous notice of the sale and of the time and place thereof by beat of drum in the municipality or ward in which the property is situated, and by serving on the defaulter a notice in the prescribed form:

Provided that if the property is of a perishable nature it may be sold at once with the consent of the defaulter, or without such consent at any time after the expiry of six hours from the seizure.

Officer may break open door.

126. The officer charged with the execution of the warrant may, under the special order of the Commissioners, between sunrise and sunset break open any outer or inner door or window of a house in order to make the distress if he has reasonable grounds for believing that such house contains any movable property belonging to the defaulter, and if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.)

Provided that he shall not enter or break open the door of any room appropriated for the zenana or residence of women, which by the usage of the country is considered private, except after three hours' notice and opportunity given for the retirement of the women.

Sale how to be conducted.

127. (1) If the sum due be not paid with costs before the time fixed for the sale, or the warrant be not discharged or suspended by the Commissioners, the movable property seized shall be sold by auction, at the time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and costs.

(2) The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

(Secs. 128—129B)

(3) The tax-collector or other officer authorized in that behalf shall make a return of all such sales to the Commissioners in the prescribed form.

128. If no sufficient movable property belonging to a defaulter, or being upon the premises in respect of which he is assessed, can be found within the municipality, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his court for the distress and sale of any movable property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any movable property belonging to the defaulter within the jurisdiction of any other Magistrate exercising jurisdiction within Bihar and Orissa, and such other Magistrate shall endorse the warrant so issued, and cause it to be executed and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners.

129. The Commissioners shall cause a regular account to be kept of all distresses levied, and sales made, for the recovery of taxes under this Act.

Commissioners
to keep
account of
distresses
and sales

Recovery o
arrest of
tax as a
public
demand.

[129A. Any arrear of tax due from any person in respect of which a notice of demand has been served under sub-section (2) of section 123, other than an arrear due on the first day of the quarter immediately preceding, or on the first day of the quarter current on, the date on which the Bihar and Orissa Municipal (Amendment) Act, 1932, comes into force, shall be recoverable as a public demand payable to the Chairman, if the Chairman sends to the Certificate-officer the written requisition for such demand mentioned in section 5 of the Bihar and Orissa Public Demands Recovery Act, 1914¹, within three months from the aforesaid date.]

Recovery of
arrear of ta
as a public
demand
after failure
to realize
the same by
distress and
sale.

[129B. (1) The Commissioners of any municipality may, at any time after the date on which the Bihar and Orissa Municipal (Amendment) Act, 1932, comes into force, apply to the District Magistrate for the application of the procedure prescribed by the Bihar and Orissa Public Demands Recovery Act, 1914², to the recovery of the whole or any part of any arrear of tax which the Commissioners have failed to realize by distress and sale, together with costs according to the prescribed scale of fees.

(2) If the District Magistrate is satisfied that the Commissioners have so failed to realize the whole or any part of any tax, and that the application has been submitted not more than one month after such failure, he shall allow the application and shall thereupon publish in the prescribed manner and for the prescribed period a list of the arrears of taxes in respect of which the application has been allowed.

1. Inserted by the B. and O. Municipal (Amendment) Act, 1932 (B. & O. Act, II of 1932), s. 2.

2. Printed ante, p. 403.

(Sects. 130-134)

(3) After such publication of the list, any arrear of tax included therein shall be recoverable as a public demand payable to the Chairman.]

Commissioners may bring suits instead of distraining or on failure of distress.

Irrecoverable taxes.

Certain persons prohibited from purchasing at sales.

Recovery from occupier of tax due from non-resident owner, and deduction from rent.

130. Instead of proceeding by distress and sale, or in case of failure to realize thereby the whole or any part of any tax, the Commissioners may sue the person liable to pay the same in any court of competent jurisdiction.

131. The Commissioners may order to be struck off the book the amount of any tax which may appear to them to be irrecoverable.

132. All officers and servants of the Commissioners and all chaukidars, constables and other officers of police are prohibited from purchasing any property at any such sale.

Recovery in Special Cases

133. If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner is not resident within the municipality, or the place of abode of such owner is unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct from the next and following payments of his rent the amount which may be so paid by or recovered from him:

Provided that no arrear of rate which has remained due from the owner of any holding for more than one year shall be so recovered from the occupier thereof;

Provided also that if any such holding is occupied in severally by more than one person, the sum recovered from any one such person shall not exceed such amount as shall bear to the total sum due the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of the holding.

134. When the owner of a holding has paid water tax in respect thereof it shall be lawful for him, if there is but one occupying tenant of the entire holding, to recover from such tenant three-fourths of the entire amount of the tax which has been so paid by such owner, and if there is one occupying tenant of a part of the holding or more than one occupying tenant of the holding, than to recover from such tenant or each of such tenants such sum as shall bear to three-fourths of the entire tax paid by the owner, the same proportion as the value of the entire holding in the occupation of such tenant bears to the entire value of the holding, subject, however, to the provisions of section 126.

Recovery by owner, from tenant of four-fifths of water tax

(Sects. 135-137)

135. If any holding is occupied in soveralty by more than one person, the Commissioners may levy the latrine tax from the owner of such holding who may recover from each occupier such sum as shall bear to the entire amount of the tax so levied the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of such holding.

Levy of
latrine tax
from owner
in certain
cases.

136. Every owner, who under the provisions of the two last preceding sections is entitled to recover any sum from any occupying tenant of any holding or of any portion thereof, shall have for the recovery of such sum all such and the same remedies, powers, rights and authorities as if such sum were rent payable to such owner by such tenant in respect of so much of such holding as may be in the occupation of such tenant.

Recovery as
rent of tax
so paid by
owner

IV.—The Tax on Vehicles, Horses and other Animals

137. (1) When it has been determined that a tax on [the]¹ vehicles, horses and other animals specified in the First Schedule shall be imposed, the Commissioners at a meeting shall, subject to the provisions of section 138, make an order that the owner of every vehicle, horse and every other animal of the kind specified in the ordinary course within the municipality and is pay the tax in respect of such vehicle, horse or other animal and shall cause such order to be published in the manner described in section 356.

Tax on
vehicles,
horses and
other
animals

(2) Such order shall be published at least one month before the beginning of the half-year in which such tax will first take effect; and shall specify at what rates, not exceeding the rates given in the said schedule, such tax shall be levied.

(3) Such tax shall not be payable in respect of—

- (a) carts;
- (b) vehicles and animals registered under Chapter X;
- (c) vehicles and animals exempted from any municipal tax under section 34 of the Auxiliary Force Act, 1870², or under the Municipal Taxation Act, 1881³;
- (d) horses used by police officers, at the rate of not more than one for each officer;
- (e) vehicles, * * * the wheels of which do not exceed twenty-four inches in diameter; or
- (f) vehicles or animals kept for sale by any bona fide dealer in such vehicles or animals, and not used for any other purpose.

1. Inserted by the B. and O. Motor Vehicles Taxation Act, 1930 (B. & O. Act II of 1930), s. 3.

2. Printed in Central Acts, Vol. VII, p. 247.

3. Printed in Central Acts, Vol. II, p. 617.

4. The words "other than motor vehicles" omitted by the B. and O. Motor Vehicles Taxation Act, 1930 (B. & O. Act II of 1930), s. 3. and First Sch.

THE BILAR AND ORISSA

(Secs. 138-143)

[B. & O. 1st]

Powers to
exempt
vehicles
or class of
vehicle,
from tax.
Duration of
tax

Half-yearly
statement of
liability and
payment of
tax

Proportion
of tax on
vehicles
acquired
during
half
year.

Grant of
concession of
tax.

Liability in
service or
tax.

138. In making an order under section 137, or by a subsequent order, the Commissioners at a meeting may exempt from the tax any vehicle or class of vehicles specified in the aforesaid schedule.

139. Any order of the Commissioners imposing a tax under section 137 shall continue in force until rescinded, and the tax shall be levied at the rates specified in the order published as aforesaid, unless and until the Commissioners at a meeting, held not less than fifteen days before the end of the year, make and publish an order specifying any different rates at which the tax shall be payable for the ensuing year.

140. (1) In any municipality in which a tax has been imposed under section 137 the owner of every vehicle, horse and other animal specified in the aforesaid schedule shall, within the first month of each half-year, forward to the Commissioners a statement in writing signed by him, containing a description of the vehicles, horses and other animals liable to the tax, for which he is bound to take out a licence.

(2) Such owner shall, at the same time, pay to the Commissioners such sum as shall be payable by him for the current half-year for the vehicles, horses and other animals specified in such statement, according to the rates specified in any order for the time being in force under sections 137 and 139.

141. If any person acquires possession, at any time after the commencement of any half-year, of any vehicle, horse or other animal specified in the aforesaid schedule in respect of which no licence has been given for such half-year, he shall forward a statement as above required within one month of the date on which he may have acquired possession thereof, and shall pay such amount of the tax as shall bear the same proportion to the whole tax for the half-year as the unexpired portion of the half-year bears to the half-year; and such amount shall be calculated from the date on which such person may have acquired possession as aforesaid.

142. (1) On receiving the amount of the tax due as aforesaid the Commissioners, or some person authorized by them in that behalf, shall give to the person paying the same a licence for the several vehicles, horses and other animals for the period in respect of which the amount is received.

(2) Such licence shall be for the current half-year and no longer.

143. Whenever the owner of any vehicle, horse or other animal liable to pay the said tax is not resident within the limits of the municipality to the Commissioners of which the tax is due, the person in whose immediate possession the vehicle, horse or other animal is for the time being kept shall take out a licence for the same.

(Secs. 144-149)

144. Any person who keeps, or is in possession of, any vehicle, horse or other animal, without the licence required by any of the three last preceding sections, shall be liable to a fine not exceeding four times the amount payable by him in respect of such licence, inclusive of the amount so payable. Penalty.

145. The Commissioners at their discretion may compound for any period, not exceeding one year, with livery stable-keepers and other persons keeping vehicles or animals for hire, for a certain sum to be paid for the vehicles or animals so kept by such persons, in lieu of the tax at the rates specified in any order made by the Commissioners under sections 37 and 139. Composition with livery stable keepers.

146 The Commissioners shall, from time to time, cause to be prepared and entered in a book, to be kept by them and to be open to the inspection of any person interested therein, a list of the persons to whom during the then current half-year a licence has been given, and of the vehicles, horses and other animals in respect of which they have paid the tax. Preparation of list of persons licensed

147. (1) The Commissioners, or any person authorized by them in that behalf, may, at any time between sunrise and sunset, enter and inspect any stable or coach-house, or any place wherein they may have reason to believe that there is any vehicle, horse or other animal liable to the tax, for which a licence has not been duly taken out. Power to inspect stable, etc., and to summon persons liable for the payment of the tax.

(2) The Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the vehicles, horses and other animals in respect of which such person is liable to be taxed.

148. On proof being given to the satisfaction of the Commissioners that a vehicle, horse or other animal for which a licence has been taken out for any half-year has ceased to be kept or to be used within the municipality during the course of such half year, the Commissioners shall order a refund of so much of the tax for the half-year as shall bear the same proportion to the whole tax for the half-year as the period during which such vehicle, horse or other animal has not been kept or used in the municipality bears to the half year; but no such refund shall be allowed unless notice be given to the Commissioners within one month of the time when such use of such vehicle, horse or other animal ceased, and, except for special cause shown, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed. Refund of tax in certain cases.

149. Nothing in sections 137 to 148 shall be deemed to authorize the levy of more than one fee for the same period in respect of any vehicle, horse or other animal which is kept or used in more than one municipality.

THE BIHAR AND ORISSA

[B. & O. A.]

(Secs. 150-154)

Meaning of "used in the ordinary course." 150. A vehicle, horse or other animal shall be deemed to be used in the ordinary course within the meaning of section 137 if it is used on an average thrice a week.

Tax on dogs.

151. When it has been determined that a tax on dogs shall be imposed, the Commissioners at a meeting shall, by a notice to be published at least one month before the beginning of the half-year in which such a tax is first to take effect, order that every owner of a dog within the municipality shall pay the tax at such rate, not exceeding two rupees per annum for each dog in his possession, as may be specified in the notice.

Application of provisions as to tax on vehicles and animals to tax on dogs.

152. The provisions of sections 139, 142 to 144 and 146 to 149 relating to the tax on vehicles, horses and other animals shall be applicable to the tax on dogs in the same manner as if a dog were an animal included in the First Schedule.

153. The Commissioners at a meeting may make by-laws—
(a) providing for the registration of dogs within the municipality; and
(b) providing for the imposition of an annual fee for such registration:

Provided that, where in any municipality a tax on dogs has been imposed under section 82, sub-section (1), such by-laws shall provide that the registration of dogs shall be made without payment of fee.

Registration and numbering of carts.

154. (1) The Commissioners at a meeting may make and publish an order that every cart, which is kept or is used in the ordinary course of business within, or which is let for hire within or without the municipality and is used in the ordinary course of business within it, shall be registered by the Commissioners with the name and residence of the owner, and shall bear the number of registration in such a manner as the said Commissioners shall direct:

Provided always that such order shall be published at least one month before the beginning of the half-year in which such order for registration shall be enforced.

- (2) This section shall not apply to—
- (a) carts which are the property [of the Crown] or of the Commissioners; or
- (b) carts which are kept without the limits of the municipality, and are only temporarily and carnally used within such limits.

(Secs. 155-160)

155. The registration of carts under the last preceding section shall be made, and the numbers assigned yearly or half-yearly, upon such days as the Commissioners shall notify, and such fee as they shall from time to time fix and notify, not exceeding four rupees if the registration has effect for a year, and not exceeding two rupees if the registration has effect for half a year, shall be paid for each registration.

Fee for registration.

156. Notwithstanding anything contained in section 155, the Commissioners at a meeting may make and cause to be published an order that, from the date specified in the order not less than twelve months after the publication of the order, the fee to be paid for the registration of any cart, any wheel of which has a rim or tyre of less than two inches in width, shall be such sum as may be specified in the order, not exceeding eight rupees if the registration has effect for a year, or four rupees if the registration has effect for half a year.

Power to increase fees for carts with narrow tyres and rims.

157. Any person becoming possessed of any cart which has not been registered for the then current period of registration shall register the same within one month from the date on which he may have become possessed thereof, and the Commissioners shall grant registration in any such case on payment of such amount of the fee as bears the same proportion to the whole fee for the current period of registration as the unexpired portion of the current period of registration bears to the whole of such period; and such fee shall be calculated from the date on which such person may have become possessed as aforesaid.

Proportionate payment of fee.

158. When the ownership of any registered cart is transferred within any period of registration, it shall be registered anew within one month of the transfer in the name of the person to whom it has been transferred, and a fee not exceeding four annas shall be paid for every such last-mentioned registration.

Transfer of ownership.

159. Any person who keeps or is in possession of a cart not duly registered as required by any of the three last preceding sections shall be liable to a fine not exceeding four times the amount payable by him in respect of such registration, inclusive of the amount so payable; and whoever, being the owner or driver of any cart, fails to affix thereto the registration number as required by section 154 shall be liable to a fine not exceeding five rupees.

Penalty.

160. (1) If any person owns or keeps any cart hereinbefore required to be registered without having caused the same to be registered, the Commissioners, or any person authorized by them in that behalf, may seize and detain such cart (provided the same be not employed at the time of seizure in the conveyance of any passengers or goods), together with the animals drawing the same; and all police officers are required on the application of the Commissioners, or any servants of the Commissioners duly authorized in that behalf, to assist in the said seizure.

Seizure and sale of unregistered cart.

THE BIHAR AND ORISSA
(Secs. 161-163)

(B. & O.A.)

(2) After such seizure the Commissioners shall forthwith issue a notice in writing that after the expiration of ten days they will sell such cart and animals by auction at such place as they may state in the notice ; and, if any registration fee, together with the cost arising from such seizure and custody, remains unpaid for ten days after the issue of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

(3) The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction :

Provided that, if at any time before the sale is concluded, the person whose cart has been seized tenders to the Commissioners, or to the person authorized by them to sell the cart, the amount of all the expenses incurred and the registration fee payable by him, the Commissioners shall forthwith release the cart so seized.

(4) Notwithstanding anything contained in this section, the surplus of the sale-proceeds of a cart seized under this section may be devoted to the payment of any fine imposed under the last preceding section, and any cart which has been seized under this section may be sold for the realization of any such fine.

161. (1) Nothing in sections 154 to 160 shall be deemed to authorize the levy of more than one fee for the same period in respect of any cart which is used in the ordinary course of business in more than one municipality.

(2) When carts not kept within any municipality are so used in more than one municipality, the [Provincial Government]¹ on the application of the Commissioners of any such municipality may, if it thinks fit, apportion between all such municipalities the registration fees paid under this Act in respect of such carts.

(3) Where a cart is registered under this Act in more than one municipality, the Commissioners of the municipality within which the cart is kept shall have a right to levy the registration fee in preference to the Commissioners of any other municipality.

162 A cart shall be deemed to be used in the ordinary course of business, within the meaning of sections 154 and 161 if it is used on an average twice a week.

VII Rules

163 The [Provincial Government]¹ may make rules² consistent with this Act.—

(a) prescribing the qualifications of, and the procedure to be followed by, an assessor of municipal taxes appointed

1. Substituted by the A. O. for "L. G."

2. For rules under this section see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII and Orissa L. S. R. & O. Vol. I, Pt. VII.

Carts used
or registered
in more than
one municipi-
ality.

Meaning of
"used in the
ordinary
course of
business."

Power to
make rules
and to tax.

(Sects. 164-165)

under this Act;

(b) prescribing the form of notices under section 115, of notices of demand under section 123, sub-section (2), of warrants under section 125, sub-section (1), and returns of sales under section 127, sub-section (3),

(c) fixing the fees payable upon distraint under this Act.*¹

*[(d) prescribing the manner in which, and the period for which, the list of arrears of taxes referred to in sub-section (2) of section 129-B shall be published;]

*[(e) prescribing the manner in which and the conditions subject to which the drainage tax may be varied under sub-section (3) of section 86A, and]

[(f)]² regulating any other matter relating to taxes in respect of which this Act makes no provisions or insufficient provision, and provision is in the opinion of the [Provincial Government]³ necessary.

CHAPTER V

ROADS AND BUILDINGS

Roads

164. (1) Before beginning to lay out or make a road, a person shall, if so required by any by-law, give notice in writing of his intention to do so to the Commissioners.

Notices of
intention to
lay out or
make a road.

(2) Where a by-law has been made prescribing and requiring information and plans in addition to a notice, no notice under sub-section (1) shall be considered to be valid until the information and plans (if any) required by such by-law have been furnished to the satisfaction of the Commissioners.

165. (1) Before passing an order on a notice submitted under section 164, the Commissioners may issue—

Postpone
men of work
and demand
for particu-
lars.

(a) an order directing that, for a period therein specified, which shall not be longer than one month from the

1 The word "and" omitted by the B. and O. Municipal (Amendment) Act, 1930 (B & O. Act III of 1930), s. 8 (a).

2 Inserted by the B. and O. Municipal (Amendment) Act, 1932 (B. & O. Act II of 1932), s. 3 (1).

3 This clause which was inserted by the Bihar and Orissa Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 8 (b) as "(d)" relettered as "(e)" by the Bihar and Orissa Municipal (Amendment) Act, 1932 (B. & O. Act II of 1932), s. 3 (2).

4 This clause which was originally "(d)" relettered as "(e)" by the Bihar and Orissa Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 8 (b) as "(d)" by the Bihar and Orissa Municipal (Amendment) Act, 1932 (B. & O. Act II of 1932), s. 3 (2).

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(Secs. 166 169)

[B. & O.A]

date of such order, the intended work shall not be proceeded with, or

(b) an order requiring further particulars.

(2) A notice under section 164 shall not be deemed valid until the further particulars (if any) required by an order under clause (1) of sub-section (1) have been furnished to the satisfaction of the Commissioners.

166 (1) The Commissioners may sanction the proposed road either absolutely or subject to such written directions as to level, means of drainage, direction and width, and as to the period within which the work is to be completed, as the Commissioners may deem fit to issue.

(2) Should the Commissioners neglect or omit for two months after the receipt of a valid notice under section 164 or, if an order has been issued under clause (1) of sub-section (1) of section 165, fail, within the period specified in such order, to make and deliver to the person who has given the notice an order of the nature specified in sub-section (1) in respect thereof, the Commissioners shall be deemed to have sanctioned the proposed road absolutely.

(3) Nothing in sub-section (2) shall be construed to authorize any person to act in contravention of any provisions of this Act or of any by-law.

167. (1) A sanction given or deemed to have been given by the Commissioners under section 166 shall be available for one year, or for such period as may be specified in any written direction given by the Commissioners under the said section.

(2) After the expiry of the said period the proposed road may not be commenced except in pursuance of a further sanction applied for and granted under the foregoing section.

168. Any person who begins, continues or completes the laying out of a road without giving the notice required by any by-law, or in contravention of any written directions made by the Commissioners under section 166, or of any provision of this Act, shall be liable to a fine not exceeding one hundred rupees.

169. In any case where the Commissioners consider that any land is being or has been laid out as a road without the notice required by any by-law, or in contravention of any written direction made by the Commissioners under section 166, or of any provision of this Act, the Commissioners may, by a written notice, require the owner of the land to alter the road in such manner as they deem necessary, and the owner or occupier of any building, which is built or has been built on or along the road, to alter or demolish such building.

Duration of
sanction.Illegal
making of
road.Power to
alter un-
sanctioned
road as a
residential
building.
Reserve.Sanction of
road by Com-
missioners.

(Secs. 170-172)

170. (1) When the Commissioners consider that in a road, not being a public road, or in a part of such road within the municipality, it is necessary for the public health, convenience or safety that any work should be done for the levelling, paving, metalling, flagging, channelling, draining, lighting or cleansing thereof the Commissioners may by written notice require the owners of the land or buildings fronting, adjoining or abutting upon such road or part thereof, to carry out such work in a manner and within a time to be specified in such notice.

Power to require levelling, paving, etc., of a road.

(2) If such notice is not complied with during the time specified, the Commissioners may, if they think fit, execute the work, and may recover the expenses incurred in doing so from the owners in default according to the frontage of their respective lands or buildings and in such proportion as may be decided by the Commissioners.

(3) The owner or owners of a road or a part of a road wherein any such work as is mentioned in sub-section (1) has been carried out, may require the Commissioners to declare the road a public road in accordance with the procedure prescribed by section 171.

Explanation.—A requisition by the owners of the greater portion of a road or a part of a road shall, for the purposes of this sub-section, be deemed to be a requisition of all such owners.

171. (1) The Commissioners may, at any time, and shall, when required by requisition under sub-section (3) of section 170, by public notice posted up in a road which is not a public road, or in a part of such road, give intimation of their intention to declare the same a public road, and unless within two months next after such notice has been so posted up, the owner or owners of such road or such part of a road, or the greater portion thereof, lodges or lodge objections at the municipal office, the Commissioners may, by further public notice posted up in such road or such part, declare the same to be a public road.

Adoption of a road as a public road.

(2) Any public notice required under sub-section (1) shall, in addition to being posted up in the road, be published in a local paper (if any) or in such other manner as the Commissioners think fit.

172. The Commissioners may—

- (a) lay out and make a new public road and construct works subsidiary to the same,
- (b) widen, lengthen, extend, enlarge or otherwise improve any existing public road if vested in the Commissioners,
- (c) turn, divert, discontinue or close any public road so vested,
- (d) provide within their discretion building sites of such dimensions as they think fit to abut on or adjoin any public road made, widened, lengthened, extended,

Power to construct, improve and provide sites on public roads.

enlarged or improved by the Commissioners under clauses (a) or (b) or by the [Provincial Government]¹, subject to the provisions of any rule prescribing the conditions on which property may be acquired by the Commissioners, acquire any land, along with the buildings thereon, which they consider necessary for the purpose of any scheme or work undertaken or projected in exercise of the powers conferred by the

(f) subject to the provisions of any rule prescribing the conditions on which property vested in the Commissioners may be transferred, lease, sell or otherwise dispose of any property acquired by the Commissioners under clause (e) or any buildings erected thereon or any land used by the Commissioners for a public road, and in doing so impose any condition as to the removal of any building existing thereon, as to the description of any new building to be erected thereon, as to the period within which such new building shall be completed, and as to any other matter that they deem fit.

173. (1) Whenever the Commissioners consider it expedient to define the general line of buildings on each or either side of any existing or proposed public road, they shall give public notice of their intention to do so.

(2) Every such notice shall specify a period within which objections will be received.

(3) The Commissioners shall consider all objections received within the specified period and may then pass a resolution defining the said line, and the line so defined shall be called "the regular line of the road".

(4) Thereafter it shall not be lawful for any person to erect, re-erect, or alter a building or part of a building so as to project beyond the regular line of the road, unless he is authorized to do so by a sanction granted under section 188 or by a permission in writing (and the Commissioners are hereby empowered to grant such permission) under this section.

(5) Any owner of land who is prevented by the provisions of this section from erecting, re-erecting, or altering any building on any land may require the Commissioners to make compensation for any damage which he may sustain by reason of such prevention, and, upon the payment of compensation in respect of any land situated within the regular line of the road, such land shall rest in the Commissioners.

¹. Substituted by the A. O. for "L. G".

Power to regulate line of buildings on public roads.

(Secs. 174-176)

(6) The Commissioners may, by notice, require the alteration or demolition of any building or part of a building erected, re-erected, or altered in contravention of sub-section (4).

174. (1) Whenever any house, part of which projects beyond the regular line of a road, or beyond the front of the house on either side thereof, is burnt down or otherwise destroyed, or is taken down in order to be rebuilt or repaired, the Commissioners may require the same to be set back to, or beyond, the line of the road or drain, or the line of the adjoining house, and shall pay reasonable compensation to the owner of such house, if any direct damage is thereby sustained.

Setting back of houses projecting beyond the regular line of road or drain when taken down.

(2) Any owner or occupier of a house who fails to comply with a requisition issued by the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees and to a further fine not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

Explanation.—The expression "direct damage" as used in sub-section (1) with reference to land, means the loss to the owner or occupier equivalent to the market value of the land of which he has been deprived and the depreciation, if any, in the ordinary market value of the rest of the land resulting from the area being reduced in size; but does not include damage due to the prospective loss of any particular use to which the owner may allege that he intended to put the land, although such use may be injuriously affected by the reduction of the area of the site.

175. (1) The Commissioners shall, during the construction or repair of a public road or of any waterworks, drains or premises vested in them, or whenever any public road, waterworks, drain or premises vested in them has or have, for want of repairs or otherwise become unsafe for use by the public, take all necessary precautions against accident by—

Duties of Commissioners when constructing public roads etc.

(a) shoring up and protecting adjacent buildings,

(b) fixing bars, chains, or posts across or in any road for the purpose of preventing or diverting traffic during such construction or repair, and

(c) guarding and providing with sufficient lighting from sunset to sunrise any work in progress.

(2) Any person who without the authority or consent of the Commissioners in any way interferes with any arrangement or construction made by the Commissioners under sub-section (1) for guarding against accident shall be liable to a fine not exceeding fifty rupees.

176. (1) Every persons intending to build or take down any house, or to alter or repair the outward part of any house, shall, if any public road will be obstructed or rendered inconvenient by means of such work, and if so required by the Commissioners by notice, before beginning the same, cause sufficient hords or fences to be put up in order to separate the house, where such works are

to be carried out during repairs.

(Sects. 180-182)

thereof, at such height from the surface of the road, and to such an extent beyond the line of the plinth or basement wall, as are specified in such by-law.

(2) In giving permission under sub-section (1), the Commissioners may prescribe the extent to which, and the conditions under which, any roofs, eaves, weather-boards, shop-boards and the like may be allowed to project over such roads.

180. (1) No platform shall be erected, re-erected or extended upon or over any public road or drain without the previous sanction of the Commissioners. Erection of platforms.

(2) The owner of every platform ; except platforms which are used for giving such access to the houses as the Commissioners may consider necessary, shall, if the Commissioners at a meeting so direct take out a license for keeping the platform.

(3) Every such licence shall remain in force for one year and shall be renewable annually.

(4) For every such licence there shall be paid a fee to be fixed by the Commissioners at a rate of not less than two annas nor more than eight annas for each square foot of the superficial area of the platform except such portion thereof as is used for giving such access to a house as the Commissioners may consider necessary.

(5) Any person who contravenes any of the provisions of this section shall be liable to a fine not exceeding fifty rupees.

181. (1) Whenevers any private house, wall or other erection, or any tree, falls down and obstructs or encumbers any public road or drain, the Commissioners may remove such obstruction or encumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners may seem fit. Removal of fallen house etc., obstructing road or drain.

(2) Any person who fails to comply with a requisition issued by the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

182. Any person who, in order to provide for the passage of water or for any other purpose, without the consent of the Commissioners, digs or cuts up any public road shall be liable to a fine not exceeding twenty-five rupees, and shall in addition be bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public road. Penalty for cutting road.

THE BIHAR AND ORISSA

(Sects. 177-179)

{B. & O. Act}

being carried on, from the road, and shall keep such hoard or fence standing and in good condition, to the satisfaction of the Commissioners, during such time as the public safety or convenience requires and shall cause the same to be sufficiently lighted during the night:

Provided that no person shall put up a hoard or fence without the written permission of the Commissioners, nor shall he keep up the said hoard or fence for a time longer than allowed in the said written permission which shall not exceed two months.

(2) Any person who contravenes the provisions of sub-section (1) or who, without written permission, erects or sets up any hoard, scaffolding or fence whatsoever, or who, being permitted, fails to put up such fence or hoard or to continue the same standing, or to maintain the same in good condition, or who does not, while such hoard or fence is standing, keep the same sufficiently lighted during the night, or who does not remove the same within eight days after the date of the notice given by the Commissioners, shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the offence is continued after he has been convicted of such offence.

177 The Commissioners may grant permission to any person, for such period not exceeding two months as they may think fit, to deposit any movable property on any public road, or to make an excavation in any public road, or to enclose the whole or any part of any road, and may charge such fees as they may fix for such permission:

Provided that such person undertakes to make due provision for the passage of the public and to erect sufficient fences to protect the public from injury, danger or annoyance, and to light such fences from sunset to sunrise sufficiently for such purpose.

178 The Commissioners may close, for a period not exceeding one month, any road or part of a road for the purpose of repairing such road, or for the purpose of constructing any drain, culvert or bridge, or for any other public purpose.

Provided that the Commissioners so closing any road shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such road.

179. (1) Subject to any rules¹ made by the [Provincial Government] prescribes the conditions for the sanction by Commissioners of projections over roads or drains, the Commissioners may give written permission, where provision is made by a by-law for the giving of such permission, to the owners or occupiers of buildings in or on roads to erect or re-erect open verandahs, balconies or rooms, to project over a road or a drain in a road from any upper storey

1. For rules prescribing conditions for the sanction by Commissioners of projections over roads or drains, see the B & O Local Statutory Rules and Orders Vol. I, Pt. VII.

2. Substituted by the A. O. for "L. G."

Leave to deposit materials on, or to excavate or close a road

over to a road part of a road for repairs or other public purpose,

Sanction of Commissioners to projections over roads and drains.

(Secs. 180-182)

thereof, at such height from the surface of the road, and to such an extent beyond the line of the plinth or basement wall, as are specified in such by-law.

(2) In giving permission under sub-section (1), the Commissioners may prescribe the extent to which, and the conditions under which, any roofs, eaves, weather-boards, shop-boards and the like may be allowed to project over such roads.

180. (1) No platform shall be erected, re-erected or extended upon or over any public road or drain without the previous sanction of the Commissioners. Erection of platforms.

(2) The owner of every platform ; except platforms which are used for giving such access to the houses as the Commissioners may consider necessary, shall, if the Commissioners at a meeting so direct take out a licence for keeping the platform.

(3) Every such licence shall remain in force for one year and shall be renewable annually.

(1) For every such licence there shall be paid a fee to be fixed by the Commissioners at a rate of not less than two annas nor more than eight annas for each square foot of the superficial area of the platform except such portion thereof as is used for giving such access to a house as the Commissioners may consider necessary.

(5) Any person who contravenes any of the provisions of this section shall be liable to a fine not exceeding fifty rupees.

181. (1) Whenever any private house, wall or other erection, or any tree, falls down and obstructs or encumbers any public road or drain, the Commissioners may remove such obstruction or encumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners may seem fit. Removal of fallen house etc., obstructing road or drain.

(2) Any person who fails to comply with a requisition issued by the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

182. Any person who, in order to provide for the passage of water or for any other purpose, without the consent of the Commissioners, digs or cuts up any public road shall be liable to a fine not exceeding twenty-five rupees, and shall in addition be bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public road. Damages for cutting road.

(Secs. 177-179)

[B. & O. Act]

being carried on, from the road, and shall keep such hoard or fence standing and in good condition, to the satisfaction of the Commissioners, during such time as the public safety or convenience requires and shall cause the same to be sufficiently lighted during the night :

Provided that no person shall put up a hoard or fence without the written permission of the Commissioners, nor shall he keep up the said hoard or fence for a time longer than allowed in the said written permission which shall not exceed two months.

(2) Any person who contravenes the provisions of sub-section (1) or who, without written permission, erects or sets up any hoard, scaffolding or fence whatsoever, or who, being permitted, fails to put up such fence or hoard or to continue the same standing, or to maintain the same in good condition, or who does not, while such hoard or fence is standing, keep the same sufficiently lighted during the night, or who does not remove the same within eight days when directed by the Commissioners, shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the offence is continued after he has been convicted of such offence.

177. The Commissioners may grant permission to any person, for such period not exceeding two months as they may think fit, to deposit any movable property on any public road, or to make an excavation in any public road, or to enclose the whole or any part of any road, and may charge such fees as they may fix for such permission :

Provided that such person undertakes to make due provision for the passage of the public and to erect sufficient fences to protect the public from injury, danger or annoyance, and to light such fences from sunset to sunrise sufficiently for such purpose.

178. The Commissioners may close, for a period not exceeding one month, any road or part of a road for the purpose of repairing such road, or for the purpose of constructing any drain, culvert or bridge, or for any other public purpose :

Provided that the Commissioners so closing any road shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such road.

179. (1) Subject to any rules¹ made by the [Provincial Government]², prescribing the conditions for the sanction by Commissioners of projections over roads or drains, the Commissioners may give written permission, where provision is made by a by-law for the giving of such permission, to the owners or occupiers of buildings in or on roads to erect or re-erect open verandahs, balconies or rooms, to project over a road or a drain in a road from any upper story

1. For rules prescribing conditions for the sanction by Commissioners of projections over roads or drains, see the B & O Local Statutory Rules and Orders Vol. I, Pt. VII.

2. Substituted by the A. O. for "L. G."

Power to
close a road
or part of
a road for
repairs or
other public
purpose.

Sanction of
Commissioners
to projections
over roads
and drains.

(Sects. 180-182)

thereof, at such height from the surface of the road, and to such an extent beyond the line of the plinth or basement wall, as are specified in such by-law.

(2) In giving permission under sub-section (1), the Commissioners may prescribe the extent to which, and the conditions under which, any roofs, eaves, weather-boards, shop-boards and the like may be allowed to project over such roads.

180. (1) No platform shall be erected, re-erected or extended upon or over any public road or drain without the previous sanction of the Commissioners. Erection of platforms.

(2) The owner of every platform ; except platforms which are used for giving such access to the houses as the Commissioners may consider necessary, shall, if the Commissioners at a meeting so direct take out a license for keeping the platform.

(3) Every such licence shall remain in force for one year and shall be renewable annually.

(4) For every such licence there shall be paid a fee to be fixed by the Commissioners at a rate of not less than two annas nor more than eight annas for each square foot of the superficial area of the platform except such portion thereof as is used for giving such access to a house as the Commissioners may consider necessary.

(5) Any person who contravenes any of the provisions of this section shall be liable to a fine not exceeding fifty rupees.

181. (1) Whenever any private house, wall or other erection, or any tree, falls down and obstructs or encumbers any public road or drain, the Commissioners may remove such obstruction or encumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners may seem fit. Removal of fallen house etc., obstructing road or drain.

(2) Any person who fails to comply with a requisition issued by the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

182. Any person who, in order to provide for the passage of water or for any other purpose, without the consent of the Commissioners, digs or cuts up any public road, shall be liable to a fine not bound to pay made by him Penalty for cutting road.

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[B. & O. Ac]

Regulation
of troughs
and rain.
water pipes
affecting a
road.

Names of
roads and
numbers of
houses,

Power to
make by-
laws,

Notice of
intention
to erect
building or
make well,

183. The Commissioners may by notice require the owner or occupier of any building or land abutting on a road to put up and keep in good condition proper troughs and pipes for receiving and carrying off the water from the building or land, and for discharging the same in such manner as the Commissioners may think fit, so as not to cause a nuisance or to inconvenience persons passing along the road.

184. (1) The Commissioners at a meeting may cause a name to be given to any road and to be affixed in such place as they may think fit, and may also cause a number to be affixed to every house and in like manner may, from time to time, cause such names and numbers to be altered.

(2) Any person who destroys, pulls down, defaces or alters any name or number put up by the Commissioners under the authority of sub-section (1) shall be liable to a fine not exceeding twenty rupees.

185. The Commissioners at a meeting may make by-laws consistent with this Act—

- (a) to regulate or prohibit any description of traffic on roads, and to prevent obstructions, encroachments, excavations and nuisances on or near roads,
- (b) to prevent, prohibit or regulate the use or occupation of any or all public roads or places by any person for the sale of articles or for the exercise of any calling or for setting up any booth or stall, and to provide for the levy of fees for such use or occupation,
- (c) to determine the information and plans to be furnished to the Commissioners under section 164, and
- (d) to regulate the conditions on which permission may be given under section 179 for projections over roads and drains.

Buildings

186. (1) A person shall give notice to the Commissioners before beginning, within the limits of the municipality,—

- (a) to erect a new building or new part of a building, or
- (b) to re-erect, or make a material alteration in a building, or
- (c) to make or enlarge a well.

(2) The Commissioners may by a by-law exempt any class of buildings or wells within the whole or any part of the municipality from the provisions of sub-section (1).

(3) An alteration in a building shall, for the purposes of this Chapter and of any by-law, be deemed to be material if it—

- (a) affects or is likely to affect prejudicially the stability or safety of the building or the condition of the building

(Sects. 187-188)

in respect of drainage, ventilation, sanitation or hygiene, or

- (b) increases or diminishes the height, or area covered by, or cubical capacity of, the building or reduces the cubical capacity of any room in the building below the minimum prescribed in any by-law, or
- (c) converts into a place for human habitation a building or part of a building originally constructed for other purposes, or
- (d) is an alteration declared by a by-law made in this behalf to be a material alteration.

187. (1) Where a by-law has been made prescribing and requiring any information and plans in addition to a notice, no notice under section 186 shall be considered to be valid until the information, if any, required by such by-law has been furnished to the satisfaction of the Commissioners.

Plans and specifications required to validate notice.

(2) In any other case, the Commissioners may, within fifteen days of the receipt of the notice required by section 186, require a person who has given such notice to furnish a plan and specification of any existing or proposed building, or part of a building, or well, together with a site plan of the land, with such reasonable details as the Commissioners may prescribe in their requisition; and in such case the notice shall not be considered to be valid until such plans and specification have been furnished to the satisfaction of the Commissioners.

Sanction of work by Commissioners.

188. (1) Subject to the provisions of any by-law the Commissioners may either refuse to sanction any work of which notice has been given under section 186 or may sanction it absolutely or subject to—

- (a) any written directions that the Commissioners deem fit to issue in respect of all or any of the matters mentioned in clause (e) of section 195, or in respect of the period within which the works shall be completed; or
- (b) a written direction requiring the set-back of the building or part of a building to the regular line of the road prescribed under section 173, or, in default of any regular line prescribed under that section, to the line of frontage of any neighbouring building or buildings.

(2) In the case of a refusal to sanction under sub-section (1), the Commissioners shall communicate in writing the reasons for such refusal to the person giving notice under section 186.

(3) Should the Commissioners neglect or omit for one month after the receipt of a valid notice under section 186 to make and deliver to the person who has given such notice an order of the nature

(Secs. 189-193)

specified in sub-section (1) in respect thereof, the Commissioners shall be deemed to have sanctioned the proposed work absolutely:

Provided that nothing in this sub-section shall be construed to authorize any person to act in contravention of this Act or of any by-law.

Duration of sanction.

189. (1) A sanction given or deemed to have been given by the Commissioners under the last preceding section shall be available for one year.

(2) After the expiry of the said period the proposed work may not be commenced except in pursuance of a fresh sanction applied for and granted under the foregoing sections.

190. The Commissioners shall pay compensation to the owner for any damage which he may sustain in consequence of the prohibition of the re-erection of any house or of their requiring any land belonging to him to be added to the road.

Compensation for damage sustained through order passed under section 188.

Effect of sanction.

191. A sanction given or deemed to have been given under section 188 shall not operate to relieve any person from the obligation imposed by section 174, 192 or 193, but shall not operate to relieve any person from the obligation imposed by section 179 to obtain separate sanction for any structure referred to therein.

Illegal erection or alteration of a building.

192. Any person who begins, continues or completes the erection or re-erection of, or any material alteration in, a building or part of a building, or the construction or enlargement of a well, without giving the notice required by section 186 and waiting for the direction of an order of the Commissioners under section 188 or any by-law, shall be liable to a fine not exceeding five hundred rupees.

Power of Commissioners to stop erection and to demolish building erected.

193. In any case where the Commissioners consider that the erection, re-erection or alteration of a building, or part of a building, or the construction or enlargement of a well, on any land is an offence under section 192, they may within fifteen days from the date on which information is received by them of such offence, by written notice direct the owner or occupier of such land to stop such erection, re-erection or demolition, or to demolish such building, part of a building or well:

Provided that no action shall be taken under this section more than fifteen days after such erection, re-erection, alteration, construction or enlargement has been completed,

(Secs. 191-195)

194. (1) Whenever it appears to the Commissioners that any building, part of a building, wall, bank, or other structure or anything affixed thereto is in a ruinous condition and dangerous to persons or property, the Commissioners may —

Power for
the preven-
tion of
danger from
ruinous
buildings.

- (i) forthwith cause a proper hoard or fence to be put up for the protection of any persons who may be endangered, and
- (ii) by notice require the owner or occupier of the building, or the owner or occupier of the land to which such building, wall, bank or other structure is affixed, within seven days to demolish, secure or repair such building, wall, bank or other structure, or
- (iii) where it appears to the Commissioners that immediate action is necessary for the purpose of preventing imminent danger to any person or property, themselves take such immediate action and recover the cost thereof from the owner or occupier of the building or land.

(2) Any person who fails to comply with a requisition issued by the Commissioners under clause (ii) of sub-section (1) shall be liable to a fine not exceeding one hundred rupees, and to a further fine not exceeding twenty rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

195. The Commissioners at a meeting may, and where required by the [Provincial Government]¹ shall, make by-laws, consistent with this Act and any rule framed thereunder, applicable to buildings generally or to any particular class of buildings within the whole or any part of the municipality, and may by such by-laws—

Powers to
make by-
laws
regulating
buildings.

- (a) require notice of intention to erect, re-erect or alter a building or to make or enlarge a well, or exempt any class of buildings or wells in respect of the liability to give notice under section 186;
- (b) determine the information and plans to be furnished with such notice;
- (c) prescribe the minimum cubical capacity of a room, or declare an alteration of any specific description to be a "material alteration";
- (d) prescribe that, on payment of fees in accordance with such scale as is specified in this behalf, plans and specifications shall be obtainable from the Commissioners or from an agency prescribed by the Commissioners;
- (e) prescribe, with reference to the erection, re-erection or alteration of buildings, or of any class of buildings, all or any of the following matters:—
- (i) the materials and method of construction to be used for external and party walls, roofs and floors;

¹, Substituted by the A. O. for "L. G."

(Sec. 196)

- (ii) the provision, position and the materials and method of construction of fireplaces, chimneys, drains, latrines, [water closets]¹, urinals and cesspools;
- (iii) the ventilation of drains, latrines, [water closets]¹, urinals and cesspools, and the provision of access thereto from roads;
- (iv) the ventilation and the space to be left about the building to secure free circulation of air and to facilitate scavenging and for prevention of fire;
- (v) the free passage or way in front of the building;
- (vi) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on;
- (vii) the level and width of foundation, level of the lowest floor, and stability of structure;
- (viii) the number and height of the storeys of which the building may consist;
- (ix) the means to be provided for egress from the building in case of fire;
- (x) any other matter affecting the ventilation or sanitation of the building; and
- (xi) the conditions subject to which sanction for the construction and alteration of a well may be refused or granted with a view to prevent pollution of the water or danger to any person using the well; and
- (f) regulate in any manner not specifically provided for in this Act the erection of any enclosure, wall, fence, tent, awning or other structure, of whatsoever kind or nature, on any land within the limits of the municipality.

Removal of Encroachments on Roads, House-gullies and Property of the Commissioners

Notice to remove obstructions and encroachments on roads, house-gullies and property of the Commissioners

196. (1) The Commissioners may, subject to the provisions of sections 179 and 180, issue a notice requiring any person to remove any building which he may have built, or any wall, fence, rail, post or other obstruction or encroachment which he may have erected, in or on any house-gully, public drain, aqueduct, water-course or ghat or any property vested in the Commissioners.

(2) If the person who built or erected the said building, wall, fence, rail, post or other obstruction or encroachment is not known or cannot be found, the Commissioners may cause a notice to be posted up in the neighbourhood of the said building, wall, fence, rail, post or other obstruction or encroachment requiring any person interested in the same to remove it, and it shall not be necessary to name any person in such requisition.

1. Inserted by the B. and O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 9.

(Secs. 197-201)

197. The Commissioners may, subject to the provisions of section 180, issue a notice requiring the owner or occupier of any house to remove or alter any projection, obstruction or encroachment erected or placed against or in front of such house, if the same overhangs the road or juts into, or in any way projects or encroaches upon, or is an obstruction to the safe and convenient passage along, any house-gully, or obstructs, or projects, or encroaches into or upon any public drain or aqueduct in any road, or into or upon any public water-course or ghat or any property vested in the Commissioners.

198. If the person on whom a notice has been issued under section 196, or section 197 fails to comply with the requisition within eight days of the receipt of the same,

or if where a notice has been posted up under sub-section (2) of section 196, the building, wall, fence, rail, post or other obstruction or encroachment is not removed within eight days of the posting up of the notice,

the Magistrate may, on the application of the Commissioners, order that the obstruction, encroachment or projection be removed, or that the projection be altered, and thereupon the Commissioners may, notwithstanding anything contained in sections 359 to 363, remove such obstruction, encroachment, or projection or alter such projection.

199. The costs incurred by the Commissioners in carrying out any work under section 198 shall be recoverable from the person by whom the obstruction, encroachment or projection was built, erected or placed, and, if such person is not known or cannot be found, the Commissioners may recover such costs by sale of the materials removed and shall credit the surplus sale-proceeds, if any, to the municipal fund, to be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

200. No person shall be entitled to compensation in respect of the removal or alteration of any building, wall, fence, rail, post, projection, obstruction or encroachment under section 196, 197 or 198 unless it be proved that the projection, building, wall, fence, rail, post, encroachment or obstruction has existed for more than three years, or before the municipality was constituted, whichever period may be less, in which case the Commissioners, on application being made to them in this behalf, may order reasonable compensation to be paid to any person who suffers damage by reason of any removal or alteration under the aforesaid sections. In determining the amount of compensation, the value of the land shall not be taken into consideration.

201. Every order made by the Magistrate under section 198 shall be deemed to be an order made by him in the discharge of his judicial duty, and the Commissioners shall be deemed to be persons bound to execute such orders of a Magistrate within the meaning of the Judicial Officers' Protection Act, 1850¹.

Notice to remove projections on houses encroaching on roads, house-gullies and property of the Commissioners.

Power of Commissioners to remove, if notice not complied with.

Recovery of costs of removal.

Compensation for removal of obstruction.

Effect of order made under section 198.

(Secs. 202-204)

Power to
require
landholders
to trim
hedges,
etc.

Penalties for
encroach-
ments.

202. The Commissioners may by notice require the owner or occupier of any land, within a period to be specified in the notice, to trim or prune to the dimensions specified in the notice the hedges thereon bordering on any public road, and to cut and trim in the manner specified in the notice any trees thereon overhanging any public road or tank, or any well used for drinking purposes, or obstructing any public road or causing, or likely to cause, damage to any public road or any property of the Commissioners, or likely to cause damage to any person using any public road, or fouling or likely to foul the water of any well or tank.

203. (1) Any person who erects or re-erects any such projection as is referred to in section 179 without the permission thereby required, or in contravention of any permission given thereunder, or who otherwise encroaches upon any road, house-gully, drain, aqueduct or water-course by making any excavation, or by erecting any wall, fence, rail, post, or other obstruction, shall be liable to a fine not exceeding fifty rupees.

(2) Any person who fails to comply with a requisition issued by the Commissioners under section 196, 197 or 202 shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

CHAPTER VI

CONSERVANCY AND DRAINAGE

Removal of Sewage, Offensive Matter and Rubbish

Duties of
Commis-
sioners in
relation to
conservancy

204. It shall be the duty of the Commissioners to provide for—

(a) the removal and disposal of sewage, offensive matter and rubbish from all public latrines, urinals and drains, all public roads and all other property vested in the Commissioners;

(b) the removal and disposal in any municipality wherein a latrine tax has been imposed under section 82 of sewage and offensive matter from all private latrines, urinals and cesspools;

(c) the conversion of such sewage, offensive matter and rubbish collected by the municipality into compost manure in the manner notified by the Provincial Government in this behalf; and

(d) the cleansing of such latrines, urinals, drains and cesspools and maintaining sufficient establishments, cattle, carts and implements for the said purposes.]

(Secs. 205-210)

205. (1) The Commissioners at a meeting may make an order requiring all persons employed in the removal of sewage within the limits of the municipality, or any part thereof, to take out licences, and to be servants of the Commissioners for the purpose of removing sewage from premises within the said limits; and may grant such licences subject to such conditions as they may think fit, and may impose fees in respect of the same.

Control over conservancy establishment.

(2) The Commissioners at a meeting may make rules subject to the approval of the [Provincial Government]¹, to define the duties of such persons, and from time to time may alter, add to or repeal such rules; and any breach of such rules shall subject the offender to a forfeiture of licence and to a fine not exceeding twenty rupees.

206. All servants of the Commissioners employed for the purposes of this Chapter may, within such hours as may be fixed by the Commissioners, enter on any premises of which the occupier or owner is liable to pay a latrine tax, and do all things necessary for the performance of their duties under this Chapter.

Power of conservancy establishment.

207. The Commissioners at a meeting may from time to time publish an order prescribing the hours within which and the manner in which sewage and offensive matter may be removed.

Power of prescribing times and manner of removal of sewage.

208. In any municipality wherein a latrine [or drainage]² tax has not been imposed [and a sewerage system has not been established]², the Commissioners may provide places convenient for the deposit of sewage and offensive matter and may require the occupiers of houses to cause the same to be deposited daily or at other stated intervals in such places, and may remove the same at the expense of the occupier from any house if the occupier thereof fails to do so as required by this section.

Deposit and removal of sewage and offensive matter in certain municipalities.

209. (1) The Commissioners at a meeting may from time to time publish an order prescribing the hours within which an occupier of any house or land may place rubbish on the public road adjacent to his house or land in order that such rubbish may be removed by the Commissioners.

Appointment of hours for placing rubbish on public road.

(2) Any person who places or allows his servants to place rubbish on a public road at other than the times appointed by the Commissioners under sub-section (1) shall be liable to a fine not exceeding twenty rupees.

210. The Commissioners may charge such fees as they think fit in respect of the removal, with the consent of the occupier, of rubbish from any house or land, or in respect of the removal from a public road of rubbish which has accumulated in the exercise of a trade or business.

Fees for removal of rubbish.

1. Substituted by the A. O. for "L. G."

2. Inserted by the B. and O. Municipal (Amendment) Act, 1930 (S. & O. Act III of 1930), s. 11.

(Sects. 211-214)

Penalty for not removing offensive matter from or near road.

211. Any person who, being the occupier of a house in or near a public road within a municipality, keeps or allows to be kept, for more than twenty-four hours, or for more than such shorter time as may be determined by a by-law, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, night-soil or filth or any noxious or offensive matter in or upon such house, or in any out-house, yard or ground attached to and occupied with such house, or suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to cleanse the same, shall be liable to a fine not exceeding fifty rupees.

Penalty for allowing sewage, offensive matter or rubbish to be thrown or run into road or drain.

212. Any person who within a municipality—

(1) without the permission of the Commissioners, throws or puts or permits his servants to throw or put any sewage or offensive matter upon any road, or who throws or puts or permits his servants to throw or put any earth, rubbish, sewage or offensive matter into any sewer or drain belonging to the Commissioners, or into any drain communicating therewith ; or

(2) causes or allows the water of any sink, sewer or cesspool, or any other offensive matter belonging to him or being on his land, to run, drain or be thrown or put upon any road, or causes or allows any offensive matter to run, drain or be thrown into a surface-drain near any road in such a manner as to cause a nuisance, shall be liable to a fine not exceeding twenty-five rupees.

Latrines, Urinals, Cesspools and Receptacles for Sewage, Offensive Matter and Rubbish

Meaning of the word "latrine" for certain purposes.

Power to provide public latrines and urinals.

Enclosure of private latrines and urinals.

[212A. For the purposes of sections 213 and 214, sub-clause (1) of sub-section (1) of section 215, and sections 216, 217, 218, 219, 220 and 221, the word "latrine" shall include a water closet.]

213. The Commissioners may provide and maintain, in sufficient numbers and in proper situations, public latrines and urinals for the separate use of each sex, and shall cause the same to be kept in proper order and to be properly cleansed.

214. (1) Every person constructing a latrine or urinal shall have such latrine or urinal shut out by a sufficient roof and wall or fence from the view of persons passing by, or residing in, the neighbourhood.

(2) Any person who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding twenty rupees.

1. Inserted by the B. and O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 12.

(Sects. 215-217)

215. (1) No person shall, without the written permission of the Commissioners,—

- (i) construct a latrine or urinal with a door or trap-door opening on to any road or drain;
- (ii) construct or keep any latrine, urinal, cesspool, house-drain or receptacle for sewage or other offensive matter within fifty feet of any public tank or water-course, or a tank or water-course which the inhabitants of any locality use.

Permission for construction of latrine or urinal near road, tank or water-course.

(2) Any person who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding twenty-five rupees.

216. (1) All latrines, urinals, cesspools and drains shall be subject to the control of the Commissioners, and the Commissioners or any officer authorised by them in that behalf may inspect any latrine, urinal, cesspool, sink, drain or receptacle for sewage, or offensive matter or rubbish at any time between sunrise and sunset, after six hours' notice in writing to the occupier of the premises in which such latrine, urinal, cesspool, sink, drain or receptacle is situated, and may, if necessary, cause the ground to be opened where they or he may think fit for the purpose of inspection or of preventing or removing any nuisance arising from such latrine, urinal, cesspool, sink, drain or receptacle [and may also, for the said purpose, cause any pipes or fittings connected with any such latrine to be opened or removed]¹.

Powers of Commissioners to inspect latrines, urinals, etc

(2) The expense of such inspection and of causing the ground to be closed [or the pipes or fittings connected with any such latrine to be closed or replaced]² and made good as before shall be borne by the Commissioners, unless the latrine, urinal, cesspool, drain or receptacle is found to be in bad order or condition, or to have been constructed in contravention of any provisions of, or made under, this or any other enactment, in which case such expense shall be recovered from the owner or occupier.

217. (1) The Commissioners may require by notice the owner or occupier of any land or building, within a period to be specified in the notice, to do all or any of the following things:—

Powers of Commissioners to require repair, alteration removal of latrine, etc

- (a) to close, remove, alter, repair, disinfect or put in good order any latrine, urinal, cesspool, drain, or receptacle for sewage, offensive matter or rubbish pertaining to such land or building, or to remove or alter any door or trap-door of any such latrine or urinal which opens on to a street or drain;

¹. Inserted by the B. & O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 13 (a).

². Inserted by *ibid.*, & 13 (b) read with the Bihar and Orissa Municipal (Amendment) Supplementary Act, 1931 (B. & O. Act. I of 1931), s. 2.

(Secs. 218.220)

(b) to provide such latrines, urinals, cesspools, drains, or receptacles for sewage, offensive matter or rubbish as should, in their opinion, be provided for the building or land, whether in addition or not to any existing ones:

[Provided that no owner or occupier of any land or building in a municipality shall be required to provide any water closet for such land or building unless the provisions of section 204 have been extended to such municipality.]

(c) to cause any latrine or urinal provided for the building or land to be shut off by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood.

(2) When requiring under sub-section (1) anything to be provided, altered or done, the Commissioners may specify in the notice the description of the thing to be provided, the pattern to conform with which the thing is to be altered, and the manner in which the thing is to be done.

**Effect of
disobedience
or contraven-
tion of re-
quisition.**

218. (1) If any latrine, urinal, cesspool, drain or receptacle for sewage, offensive matter or rubbish is defective or constructed contrary to the directions of the Commissioners, or to the provisions of this Act or any by-law made thereunder, or if any person, without the consent of the Commissioners, constructs, rebuilds or opens any latrine, urinal, cesspool, drain or receptacle which has been ordered by them to be demolished or closed, or not to be made, the Commissioners may cause such alteration to be made in such latrine, urinal, cesspool, drain or receptacle as they think fit, or may cause the same to be demolished or removed.

(2) The expenses incurred by the Commissioners under sub-section (1) shall be paid by the person by whom such latrine, urinal, cesspool, drain or receptacle was improperly constructed, rebuilt or opened, and such person shall further be liable for each such offence to a fine not exceeding fifty rupees.

**Supply of
disinfectants
by Commis-
sioners.**

219. When, under section 217, sub-section (1), an owner or occupier is required by the Commissioners to use disinfectants, the Commissioners shall, if necessary, themselves supply disinfectants or deodorants for such use at cost price, and the expense thereby incurred shall be considered as an arrear of tax, and be recoverable as such from the owner of the latrine, urinal, cesspool, drain or receptacle as the case may be, or the Commissioners may, if they think fit, order that such expense shall be paid from the municipal fund.

**Penalty for
neglecting
to keep
latrine, etc.,
in proper
order.**

220. If the owner or occupier of any latrine, urinal, cesspool, drain or other receptacle for sewage, offensive matter or rubbish refuses, after a proper notice, to provide such latrine, urinal, cesspool, drain or other receptacle as the Commissioners may require, he shall be liable to a fine not exceeding twenty-five rupees.

^{1.} Inserted by the B. and O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 14.

(Secs. 221-225)

Provided that any person who is liable to pay a latrine tax shall not be punished with a fine for neglecting or refusing to keep his latrine, urinal, or cesspool in a proper state of cleanliness.

By-laws relating to Conservancy

221. The Commissioners at a meeting may make by-laws consistent with this Act—

- (a) regulating the disposal of sewage, offensive matter, and rubbish, the maintenance of latrines, urinals, cesspools, sinks and drains, the disposal of the carcasses of animals, the fees to be charged for such disposal and the notice to be given of the death of animals;
- (b) providing for the abatement of any nuisance arising within the municipality from sewage, offensive matter or rubbish; and
- (c) generally, to give effect to the objects of this Act, in regard to conservancy and sanitation.

Drainage

222. The Commissioners may construct, within or, subject to the sanction of the [Provincial Government]¹, outside the municipality, such drains as it thinks necessary for keeping the municipality properly cleansed and drained and may carry such drains through, across or under any street or place, and, after reasonable notice in writing to the owner or occupier, into, through or under any buildings or land.

Construction
of public
drains

223. (1) The Commissioners may, from time to time, enlarge, lessen, alter the course of, cover in or otherwise improve, a public drain and may discontinue, close up or remove any such drain.

Alteration
of public
drains.

(2) The exercise of the power conferred by sub-section (1) shall be subject to the condition that the Commissioners shall provide another and equally effective drain in place of any existing drain of the use of which any person is deprived by the exercise of the said power.

224. The owner or occupier of a building or land within the municipality shall be entitled to cause his drains to empty into the drains of the Commissioners, provided that he first obtains the written permission of the Commissioners, and that he complies with such conditions, consistent with any by-law, as the Commissioners prescribe, as to the mode in which and the superintendence under which the communications are to be made between drains not vested in the Commissioners and drains which are so vested.

Use of
public drains
by private
owners.

225. (1) If any person, without the written consent of the Commissioners first obtained, makes or causes to be made, or alters, or causes to be altered, any drain or branch drain leading into any of the drains vested in the Commissioners or into any water-course, road or land vested in the Commissioners, the Commissioners may cause such

Power to
order
demol.
of drain

¹. Substituted by the A. O. for "L. G."

THE BIHAR AND ORISSA

(Sect. 226-228)

{B. & O. Act}

consent of
Com.
missioners.

drain or branch drain to be demolished, altered, remade or otherwise dealt with as they shall think fit; and the expenses thereby incurred shall be paid by the person making or altering such drain.

(2) Any person who so makes or alters a drain or branch drain without the consent of the Commissioners shall be liable to a fine not exceeding fifty rupees.

Group or
block of
houses, etc.,
may be
drained by
a combined
operation.

226. If it appears to the Commissioners that a group or block of houses may be drained or improved more economically or advantageously in combination than separately, and a drain or other outlet already exists within one hundred feet of any part of such group or block of houses, the Commissioners may cause such group or block of houses to be so drained and improved, and the expenses thereby incurred shall be recovered from the owners of such houses, in such proportions as shall to the Commissioners seem fit.

CHAPTER VII

THE PUBLIC HEALTH, SAFETY AND CONVENIENCE

Wells, Tanks and Streams

227. (1) The Commissioners may, by order published at such places as they think fit, set apart convenient wells, tanks, parts of rivers, streams or channels, not being private property,—

- (a) for the supply of water for drinking and for culinary purposes, or
- (b) for the purpose of bathing, or
- (c) for washing animals or clothes, or
- (d) for any other purpose connected with the health, cleanliness or comfort of the inhabitants,

and may by like order prohibit bathing, or the washing of animals or clothes or other things at any public place not set apart for that purpose, or at a time, or by a sex, other than that specified in the order, and may in like manner prohibit any other act by which water in public places may be rendered foul or unfit for use or which causes or is likely to cause inconvenience or annoyance to persons lawfully using such places.

(2) Any person who contravenes an order of the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees.

228. (1) The Commissioners may by notice require the owner or occupier of any land or building to cleanse, repair, cover, re-excavate, fill up or drain off a private well, tank, reservoir, cistern, pool, depression or excavation therein which may appear to the Commissioners to be injurious to health or offensive to the neighbourhood;

Power to
set apart
wells, tanks,
etc., for
drinking,
culinary,
bathing and
washing pur-
poses.

Power to
require
removal of
nuisance
arising from
anks, etc.

(Secs. 229-231)

Provided that if, for the purpose of effecting any drainage under this section, it is, in the opinion of the Commissioners, necessary to acquire any land or rights in land, not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

(2) Any person who fails to comply with a requisition issued by the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from date of service on him of such requisition.

229. The Commissioners may by notice require the owner of, or the person having control over, a private water-course, spring, tank, well or other place, the water of which is used or likely to be used for drinking or culinary purposes, to clean the same from time to time of silt, refuse or decaying vegetation, and may also require him to protect the same from pollution in such manner as to the Commissioners may seem fit, and in the case of a well to repair the same.

Power to require cleaning of sources of water for drinking or culinary purposes.

230. (1) If the Director of Public Health, Civil Surgeon, Assistant Director of Public Health or Health Officer certifies that the water of any water-course, spring, tank, well, or other place, used or likely to be used for drinking or culinary purposes, is, if so used, liable to engender or cause the spread of disease and that, owing to its situation or other cause, such place cannot effectively be protected from pollution, or if the owner of, or person having control over, any such place refuses or neglects to comply with a requisition of the Commissioners under section 229, the Commissioners may—

Power to prohibit use of polluted water for drinking or culinary purposes.

(i) by public notice prohibit the use or removal of water from such place for drinking or culinary purposes during a period to be specified in the notice and take such steps as they may consider necessary to prevent the removal of water for such purposes, or,

(ii) in the case of a private well, require the owner of, or person having control over it, to close it permanently or to fill it up with suitable material.

(2) Any person who fails to comply with an order under this section shall be liable to a fine not exceeding fifty rupees.

231. The Commissioners or any person authorized by them in that behalf may, at all reasonable times, inspect and disinfect any water-course, spring, tank, well or other place from which water is, or is likely to be, taken for drinking or culinary purposes, provided that reasonable notice shall be given before the inspection of a well situated within a house is made.

Power to inspect and disinfect sources of water used for drinking.

Removal of latrines etc., near any source of water-supply

232. The Commissioners may, unless a written permission has been given under section 215, by notice require an owner or occupier on whose land a drain, latrine, urinal, cesspool or other receptacle for sewage, offensive matter or rubbish exists within fifty feet of a spring, well, tank, reservoir or other source from which water is, or may be, derived for public use, to remove or close the same, or to put it in such condition as to prevent any pollution of the water-supply, within one week from the service of such notice.

Wells, tanks, etc., to be secured.

233. (1) If any well, tank or other excavation, whether on public or private ground, is, for want of sufficient repairs or protection, dangerous to passengers, the Commissioners shall forthwith, if it appears to them to be necessary, cause a temporary hoard or fence to be put up for the protection of passengers, and may require the owners or occupiers, or the owners and occupiers, of the land on which such tank, well or other excavation is situated, within seven days properly to secure or protect such well, tank or other excavation.

(2) Any person who fails to comply with a requisition issued by the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

Power to make by-laws.

234. The Commissioners at a meeting may make by-laws, consistent with this Act regulating the use of, and the prevention of nuisances in regard to, the public water-supply, bathing and washing places, streams, channels, tanks and wells.

Cleansing of filthy buildings or land.

235. If any building or land is in a filthy or unwholesome state, the Commissioners may by notice require the owner or occupier thereof to cleanse, or otherwise put in a proper state, the building or land and thereafter to keep the same in a clean and proper state.

Buildings unfit for human habitation

236. (1) The Commissioners may prohibit the owner of any house, not being a hut, from letting it for occupation, if in their opinion it is unstable or if the drainage or latrine accommodation is defective until its stability shall have been secured or the defects in drainage and latrine accommodation made good.

(2) Any person who lets a building or any part thereof contrary to an order under sub-section (1), shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the offence is continued after he has been convicted of such offence.

Power to prevent ruinous or unoccupied houses.

237. Whenever it appears to the Commissioners that any building, by reason of being unsecured and untenanted or by reason of having fallen into ruins, affords facilities for the commission of a nuisance or for the harbouring of snakes or other noxious animals,

(Sects. 238-241)

the Commissioners may require the owner of such building, or the owner of the land to which such building is attached, properly to secure the same or to remove or level such ruins, as the case may require.

238. (1) If any land being within one hundred feet of a drain or other outlet into which such land may, in the opinion of the Commissioners, be drained is not drained to their satisfaction, the Commissioners may require the owner within one month to drain the said land into such drain or outlet.

Power to require improvement of drainage of land.

(2) If it appears to the Commissioners that any land is by want of drainage in a state injurious to health or offensive to the neighbourhood, the Commissioners may require the owner or occupier, or both, within fifteen days to drain such land.

(3) If for the purpose of effecting any drainage under this section, it is, in the opinion of the Commissioners, necessary to acquire any land, not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

239. Wherever on any land, being private property, there exists thick vegetation or undergrowth which appears to be injurious to health or to form an impediment to efficient ventilation, the Commissioners may by notice require the owner or occupier of such land, within a period to be specified in such notice, to clear away and remove such vegetation or undergrowth.

Power to require owner to clear away noxious vegetation.

240. (1) The Commissioners at a meeting may by a general order prohibit the making of excavations for the purpose of digging earth or stones therefrom, or for the purpose of storing rubbish or offensive matter therein or the digging or construction of tanks, pits and cesspools, without their special permission previously obtained.

Power to prohibit excavation and construction of tanks, pits and cess-pools.

(2) Any person who contravenes an order under this section shall be liable to a fine not exceeding twenty-five rupees

241. If the Commissioners at a meeting are of opinion that the cultivation of any description of crop, or the use of any kind of manure, or the irrigation of land in any specified manner,—

Power to prohibit cultivation, use of manure or irrigation injurious to health.

(a) in any place within the limits of the municipality is injurious, or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood, or

(b) in any place within or without the limits of the municipality is likely to contaminate the water-supply of the municipality or otherwise render it unfit for

THE BIHAR AND ORISSA

(Sects. 242-245)

{B. & O. Act}

drinking purposes,
the [Provincial Government] may, on receipt of an application from
the Commissioners, by public notice, prohibit the cultivation of such
crop, the use of such manure, or the use of such method of irrigation
or impose such conditions with respect thereto as may prevent
injury therefrom:

Provided that, if the act prohibited has been practised in the
ordinary course of husbandry at any time during the five successive
years last preceding the date of the prohibition, compensation shall
be paid from the municipal fund to all persons interested therein
for any damage caused to them by such prohibition.

*1. Aalty for
1's obeying
sq usition*

242. Any owner or occupier of a house or land who fails to
comply with a requisition issued by the Commissioners under the
provisions of section 235, 237, 238, 239 or 241 shall be liable, for
every such default, to a fine not exceeding fifty rupees, and to a
further fine not exceeding ten rupees for every day during which the
default is continued after the expiration of eight days from the date
of service on him of such requisition.

Sanitary measures with regard to Blocks of Huts

*Power of
Commis-
sioners as
to inspection
of huts*

243. Whenever the Commissioners at a meeting are satisfied,
from inspection, or by report of competent persons, that any existing
block of huts within the municipality is, by reason of the manner in
which the huts are constructed or crowded together, or of the want
of drainage and the impracticability of scavenging, attended with
risk of disease to the inhabitants of the neighbourhood, they may
cause the locality to be inspected by two medical officers, who shall
make a report in writing on the sanitary condition of the said block
of huts, and shall specify, if necessary, in the said report, the huts
which should be removed, the roads, drains and sewers which should
be constructed, and the low lands which should be filled up with a
view to the removal of the said risk of disease.

*Power to
serve notice*

244. On receipt of the said report, the Commissioners at a
meeting may require the owners or occupiers of the huts, or, at the
option of the Commissioners, the owner of the land on which such
huts are built, to carry out and execute within a reasonable time, to
be fixed by the Commissioners for such purpose, all or any of the
works specified in the aforesaid report or any portion thereof respecti-
vely, and, if such owner, owners or occupiers shall fail to comply with
such requisition, the Commissioners themselves may execute all or any
of such works.

*1. Recovery of
expenses by
installments,
or remittance
in cases of
poverty.*

245. The Commissioners at a meeting may order that any expen-
ses payable in respect of any work done by them in consequence of
the failure of the owners or occupiers to execute such work when
required to do so under the last preceding section shall be recovered
by instalments from the person liable to pay the same; or, if it appears

(Secs. 246-251)

to them that the said person is unable by reason of poverty to pay the same, may order the same, or any portion thereof, to be paid out of the municipal fund.

246. If any of the said huts is pulled down, the Commissioners shall cause the materials of each hut to be sold separately, if such sale can be effected, and the proceeds shall be paid to the owner of the hut, or if the owner be unknown, or the title disputed, shall be held in deposit by the Commissioners until the person interested therein obtains the order of a civil court of competent jurisdiction for the payment of the same.

247. The mere fact that masonry buildings are interspersed in a block of huts shall not prevent action being taken with reference to such huts under sections 243 to 246.

Burial and Burning Grounds

248. Within three months from the date of the publication of a notification by the [Provincial Government]² extending this and the ten next succeeding sections to any municipality, every place therein which is used as a burial or burning ground for corpses shall be registered as such by the owner or person in charge thereof in the office of the Commissioners, but no fees shall be charged for such registration.

Sale of huts.

Application of sections 243 to 246 where masonry houses interspersed.

Registration of existing burial or burning grounds.

Permission to make or renew use of burial or burning grounds and registration of same.

249. The Commissioners may at their discretion at any time grant permission for the formation and making of burial or burning grounds, or for the renewed use of such grounds as, owing to disuse have not been registered under the last preceding section, and when such permission has been granted shall cause such grounds to be registered.

250. The Commissioners at a meeting may, from time to time, out of the municipal fund, provide fitting places to be used as burial or burning grounds either within or without the municipality.

Provision of places to be used as burial or burning grounds.

Prohibition to bury or burn in unregistered ground.

251 (1) After the expiration of the three months mentioned in section 248 no corpse shall be buried or burnt otherwise than in a place which is borne on the register of the Commissioners as an open burial or burning ground, or has been provided by the Commissioners for the purpose; but the Commissioners may grant special permission for a corpse to be buried or burnt elsewhere.

(2) Whoever, within a municipality, after the expiration of the said period, knowingly buries or burns, or causes, procures or suffers to be buried or burnt, any corpse in or on any ground not registered as a burial or burning ground, or which has not been provided by the

1. This and the ten next succeeding sections extended to all municipalities, by the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

2. Substituted by the A. O. for "L. G."

THE BIHAR AND ORISSA

(Secs. 252-256)

[B. & O. Act]

Commissioners for the purpose, shall be liable to a fine not exceeding one hundred rupees.

Power to
order certain
burial and
burning
grounds to
be closed

252. (1) The Commissioners at a meeting may by public notice order any burial or burning ground, whether registered under section 248 or provided under section 250, which is in their opinion dangerous or likely to be dangerous to the health of persons living in the neighbourhood, or to be offensive to such persons, to be closed from a date to be specified in the notice, and shall in such case, if no suitable place for burial or burning exists at a reasonable distance, provide a fitting place for the purpose.

(2) When notice is issued ordering the closing of any burial ground under sub-section (1) private burial places in such burial grounds may be excepted from the notice, subject to such conditions as the Commissioners at a meeting may impose in this behalf: Provided that the limits of such burial places are defined, and that they shall only be used for the burial of members of the family of the owners thereof.

Appeals
from orders
under
section 252

253. Any person aggrieved by any order made by the Commissioners under the powers conferred upon them by the last preceding section may appeal to the [Provincial Government]¹, and the decision of the [Provincial Government] shall be final. [In relation to any European cemetery, this section shall have effect as if for the references to the Provincial Government there were substituted references to the Central Government.]²

Power to
cause
corpses to be
burnt or
buried
according to
the religious
tenets of
the deceased.

254. After the expiration of not less than twenty-four hours from the death of any person, the Commissioners may cause the corpse of such person to be burnt or buried, and the expenses thereby incurred shall be recoverable as a debt due from the estate of such person. In every such case the corpse shall be disposed of, so far as may be possible, in a manner consistent with the religious tenets of the deceased.

Power to
provide for
burial of
paupers free
of charge.

255. The Commissioners at a meeting may, from time to time out of the municipal fund, provide for the burial and burning of paupers free of charge within the limits of the municipality.

Power to
license
fuel shops
at burning
grounds

256. (1) The Commissioners may, from time to time, grant licences to persons applying for the same, for the sale at burning grounds of fuel and other articles used for the cremation of dead bodies, and in case any such licence is granted shall, at a meeting prescribe a scale of rates for the sale of such articles; and any person not so licensed, who, within three hundred yards of any such burning ground, sells or offers for sale any such fuel or other articles, shall be liable to a fine not exceeding fifty rupees.

1. Substituted by the A. O. for "L. O."

2. Inserted by G.O.

(Secs. 257-259)

(2) The Commissioners may, on good and sufficient cause, revoke or withdraw any such licence they may think fit, and any person to whom any such licence is granted, who charges for the sale of any such article at any higher rate than the rate fixed for such article in such scale, shall, at the discretion of the Commissioners, be liable to have his licence cancelled and shall be liable also to a fine not exceeding ten rupees.

257. At any burning ground provided by the Commissioners, the Commissioners shall make adequate arrangements for the sale of fuel and other articles used for the cremation of dead bodies.

258. The Commissioners at a meeting may make by-laws consistent with this Act controlling and regulating the use and management of burial and burning grounds and the disposal of corpses.

Commissioners to provide fuel at burning grounds.
Power to make by-laws.

Offensive and Dangerous Trades, Occupations or Processes

259. (1) Within such local limits as may be fixed by the Commissioners at a meeting, no place shall be used without a licence granted by the Commissioners after such local inquiry as they may deem necessary, which shall be renewable annually, for any of the following trades or businesses, namely :—

Power to prohibit certain offensive and dangerous trades without licence.

- (i) the skinning or disembowelling of animals ;
- (ii) storing hides, horns or skins ;
- (iii) boiling or storing offal, blood, bones or rags ;
- (iv) melting tallow ;
- (v) tanning, or the manufacture of leather or leather goods ;
- (vi) oil-boiling ;
- (vii) soap-making ;
- (viii) dyeing ;
- (ix) burning bricks, tiles, pottery or lime ;
- (x) storing or selling coal ;
- (xi) storing kerosene, petroleum, naphtha or any inflammable oil or spirit ;
- (xii) trading in, or storing hay, straw, timber, wood, thatching grass, jute or other dangerously inflammable material ;
- (xiii) manufacture of lac ; and
- (xiv) any manufacture, process or business from which offensive or unwholesome smells may arise, or which has been declared by the [Provincial Government]¹ by notification to be dangerous or offensive.

(2) A licence for any of the purposes mentioned in sub-section (1) shall not be withheld unless the Commissioners have reason to believe that the business which it is intended to establish or maintain

1. Substituted by the A. O. for "I. G."

would be offensive or dangerous to persons residing in or frequenting the immediate neighbourhood.

(3) The Commissioners at a meeting may, subject to a maximum to be fixed by the [Provincial Government], levy a fee in respect of any such licence and the renewal thereof, and may impose such conditions upon the grant of any such licence as they may think necessary.

(4) The grant of a licence for the purposes mentioned in clause (xi) of sub-section (1) shall be consistent with the provisions of the Indian Petroleum Act, 1899,¹ and no such licence shall be granted unless the said provisions have been complied with by the applicant for the licence.

Power to order the carrying on of dangerous and offensive trades to be discontinued

260. (1) If it is shown to the satisfaction of the Commissioners at a meeting that any place licensed under section 259, contains a nuisance to the neighbourhood they may, in accordance with the use in the said section, give notice of such notice;

Provided that in this case the Commissioners shall refund so much of the fee levied under the last preceding section as may be proportionate to the unexpired portion of the year for which the licence was granted.

(2) Any person who, within a municipality, after the expiration of the time specified in a notice issued by the Commissioners under the provisions of sub-section (1), uses or permits to be used, the place specified in such notice for any trade or business mentioned in section 259, shall be liable to a fine not exceeding two hundred rupees, and to a further fine not exceeding forty rupees for each day during which the offence is continued after he has been convicted of such offence.

Licensing of places for keeping horses and cattle.

261. (1) Within such limits as the Commissioners at a meeting may determine, no cartman, livery stable-keeper or keeper of vehicles plying for hire shall keep horses, ponies or cattle for the purposes of trade or business except in a place licensed by the Commissioners.

(2) The Commissioners may license places for such purpose, and may levy a fee not exceeding one rupee on the issue and renewal of any such licence. Such licence shall be renewed in the first and seventh months of each year.

(3) It shall be in the discretion of the Commissioners at a meeting to grant any such licence subject to such conditions as they may think fit.

¹ Substituted by the A. O. for "L. G."

² See now the Petroleum Act, 1934 (XXX of 1934), Printed in Central Acts, Vol. IX, p. 284.

(Sects. 262-264A)

262. (1) Within such limits as the Commissioners may direct, no person shall keep any pig-sty adjoining or near a road unless it is shut out therefrom by a sufficient wall or fence, and in no place within such limits shall more than ten pigs or more than twenty sheep or goats be kept without the written permission of the Commissioners.

Conditions
for keeping
pig-sty.

(2) The Commissioners may charge an annual fee not exceeding two rupees for such permission, and may impose such conditions in respect of such permission as they may think necessary.

263. Any person who within a municipality—

Penalties.

(1) without a licence uses any place for any of the purposes specified in section 259 or section 261, or

(2) being a holder of a licence under section 259 or section 261, breaks any condition of such licence, or

(3) keeps any pig-sty, pigs, sheep or goats contrary to the provisions of section 262,

shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the offence is continued after he has been convicted of such offence.

264. The Commissioners at a meeting may make by-laws consistent with this Act—

Power to
make by-
laws
regulating
places used
for offensive
trades, etc.

(a) providing for the inspection and regulation of the conduct of business in a place used for any of the purposes mentioned in section 259, so as to secure cleanliness therein, or to minimize any injurious, offensive or dangerous effect arising or likely to arise therefrom;

(b) regulating or prohibiting, for the purpose of preventing danger to the public health, the stalling of horses, camels, cattle, swine, donkeys, sheep or goats;

(c) prohibiting in any specified road or area, the residing of public prostitutes and the keeping of a brothel, or the letting or other disposal of a house or building to public prostitutes or for a brothel; and

(d) generally, for the prevention of nuisances affecting the public health, safety or convenience.

Infectious and Contagious Diseases

[264A. (1) Wherever, in any house or other building used for human habitation, any person is known to be suffering from small-pox, cholera, plague or tuberculosis (in this section such person being referred to as the patient), a report of such illness shall forth-

Notification
of infectious
diseases.

THE BIHAR AND ORISSA

(Sec. 201 A)

[H. & O. Act]

with be made by the person specified in sub-section (3) to the Health Officer, the Civil Surgeon of the district, the Commissioners or to such other authority or at such place as the Commissioners may, having regard to the public convenience, appoint.

(2) If the patient dies before a report required by sub-section (1) has been made, then a report of the death of such patient shall be made by the person specified in sub section (3) to an authority specified in, or appointed under, or at any place appointed under, sub-section (1).

(3) Such report shall be made, if the illness or death specified in sub-sections (1) and (2) occur—

(a) in a house—by the occupier of the house, and his default by the head of the family of the patient present in the house, and in his default by every adult male relative of the patient present in the house, and in their default by every male adult who is or has been in charge of or in attendance on the said patient at any time during his illness:

Provided that a person who is not required to make a report in the first instance, but only in default of some other person, shall not be liable to any fine specified in sub-section (7), if he satisfies the Court that he had reasonable cause to suppose that the report had been duly made;

(b) in any hotel, sarai, dharamsala or other similar institution by the manager or other person in charge thereof;

(c) in a building owned or occupied by any educational institution, including institutions for technical or industrial training, or in any hostel or mess attached to any such institution—by the Principal, Head, master, Superintendent or other person in charge of the said institution;

(d) in a factory or other industrial institution or in any building attached to and used for the accommodation of the employees of, any such factory or institution—by the owner, agent, manager or other person in charge of such factory or industrial institution.

(4) A report made by the owner, agent, manager or other person in charge of a factory or other industrial institution shall specify the name and address of the person who is suffering, or who has died, from small-pox, cholera, plague, or tuberculosis.

(Secs. 261B-266)

(5) Any practitioner, whether practising the allopathic or any other system of medical treatment, who attends in any house or other building used for human habitation any person whom he believes to be suffering from small-pox, cholera, plague, or tuberculosis shall forthwith make a report to any authority specified in, or appointed under, or at any place appointed under, sub-section (1).

(6) Every owner, agent, manager or other person in charge of a factory or other industrial institution shall supply such periodical returns of sickness due to small-pox, cholera, plague or tuberculosis as he may from time to time be called upon by the Commissioners to furnish.

(7) Any person who fails to make a report which he is required to make by this section shall be punishable with fine which may extend to one hundred rupees.]

[264B. The [Provincial Government]¹ may, by notification, direct that all or any of the provisions of section 261A shall, during a period to be specified in such notification, apply in any municipality with respect to any infectious disease other than a disease mentioned in sub-section (1) of the said section.]

Power to apply provisions of section 261A with respect to infectious diseases not mentioned in that section.

[265. In any municipality to which this section may at any time be extended by the [Provincial Government]², when any person suffering from plague, cholera or small-pox is found to be—

Removal to hospital of patients suffering from infectious diseases.

(a) without proper lodging or accommodation, or

(b) living in a *sarai*, *dharmashala* or other public hostel, or

(c) living in a room or house which neither he, nor any one of whom he is a dependent, either owns or pays rent for,

the Commissioners, by any person authorized by them in this behalf, may on the advice of a Health Officer or any registered medical practitioner,³ remove the patient to any hospital or place at which persons suffering from such disease are received for medical treatment.

266. (1) If the Commissioners are of opinion that the cleansing or disinfecting of a building or any part thereof or of any article therein, which is likely to retain infection, will tend to prevent or check the spread of any disease, they may by notice require the owner or occupier to cleanse or disinfect the same in the manner and within the time prescribed in such notice.

Disinfection of buildings and articles.

1. See foot-note I on p. 475, ante.

2. Substituted by the A. O. for "L. G."

3. Extended to all Municipalities, see B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

4. The expression "registered practitioners" is defined in s. 2(c) of the B. & O. Medical Act, 1916(B. & O. Act II of 1916)

(2) If—

(a) within the time specified as aforesaid from the receipt of the notice, the person on whom the notice is served fails to have the building or part thereof or the article disinfected as aforesaid within the time fixed in the notice, or

(b) the occupier or owner, as the case may be, gives his consent, the Commissioners may from the municipal fund cause the building or part thereof and articles to be cleansed and disinfected.

267. In any municipality to which this section may be extended by the [Provincial Government]², the Commissioners may—

(a) provide proper places, with all necessary attendants and apparatus, for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection,

(b) cause conveyances, clothing or other articles brought for disinfection to be disinfected free of charge or subject to such charges as may be approved by them, and

(c) direct any clothing, bedding or other articles likely to retain infection to be disinfected or destroyed, and shall give compensation for any article destroyed under this clause.

Vaccination

268. A Health Officer appointed by the Commissioners shall, within the municipality to which he is appointed, subject to such restrictions as the [Provincial Government]² may impose and to the general control of the Civil Surgeon of the district, exercise the powers and perform the duties of a Superintendent of Vaccination.

Extinction and Prevention of Fire

269. For the prevention and extinction of fire, the Commissioners at a meeting may resolve to establish and maintain a fire-brigade, and to provide any implements, machinery, means of communication or supply of water which the Commissioners may think necessary for the efficient discharge of their duties by the brigade.

270. (1) On the occasion of a fire in a municipality, any Magistrate, any Municipal Commissioner, any member of a fire-brigade maintained by the Commissioners, then and thence directing the operations of men belonging to the brigade, and (if directed so to do by a Magistrate or by a Municipal Commissioner) any Police

1. Extended to all municipalities, see the B & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

2. Substituted by the A. O. for "L. G."

Provision of
places and
appliances
for
disinfection.

Health
Officer to
exercise
powers of
Superintend-
ent of
Vaccination.

Establish-
ment and
maintenance
of fire-
brigade.

Power of
fire-brigade
and other
persons for
suppression
of fires.

(Sec. 271)

Officer above the rank of constable may—

- (a) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire, or for saving life or property;
- (b) close any street or passage in or near which any fire is burning;
- (c) for the purpose of extinguishing the fire, break into or through, or pull down, or use for the passage of any house or other appliance, any premises;
- (d) cause mains and pipes to be shut off so as to give greater pressure of water in the place where the fire has occurred;
- (e) call on the persons in charge of any fire-engine to render such assistance as may be possible; and
- (f) generally take such measures as may appear necessary for the preservation of life or property.

(2) No person shall be liable to pay damages for any act done by him under sub-section (1) of this section in good faith.

271. (1) The Commissioners at a meeting may by public notice direct that, within certain limits to be fixed by them, the roofs and external walls of huts or other buildings shall not be made or renewed with grass, mats, leaves or other dangerously inflammable materials without the consent of the Commissioners in writing.

Power as to
inflammable
structures

(2) The Commissioners may at any time by written notice require the owner of a building which has an external roof or wall made of any such material as aforesaid to remove such roof or wall within such reasonable time as may be specified in the notice, notwithstanding that a notice has been issued, or that such notice has been given, before the consent of the Commissioners or before the issue of such public notice, if any:

Provided that, in the case of any such roof or wall in existence before the issue of such public notice or made with the consent of the Commissioners, the Commissioners shall make compensation for any damage caused by the removal which shall not exceed the original cost of constructing the roof or wall.

(3) Any person who without such consent as is required by sub-section (1), makes or renews or causes to be made or renewed, or in disobedience to a notice given under sub-section (2) suffers to remain a roof or wall of such material as aforesaid, shall be liable to a fine not exceeding twenty-five rupees, and to a further fine not exceeding ten rupees for every day on which the offence is continued after the date of the first conviction.

THE BIHAR AND ORISSA

(B. & O. Act)

(Secs. 272-274)

Power to
search for
inflammable
material in
excess of
authorized
quantity.

272. (1) The Commissioners may, without notice and at any period of the day or night enter into and inspect a house or building which is suspected to contain petroleum, or other inflammable material, in excess of the quantity permitted to be kept in such house or building under the conditions of a licence granted under section 259.

(2) Should any such excess quantity of such material be discovered, it may be seized and held subject to such order as a Magistrate may pass with respect to it.

(3) If the Magistrate decides that the material seized was stored in the house or building contrary to the conditions of such licence, he may pass an order confiscating the same.

(4) Subject to any provision of, or made under, this or any other enactment, the material so confiscated may be sold by order of the Magistrate, and the proceeds, after defraining the expenses of such sale, shall be credited to the municipal fund.

(5) No order of confiscation under this section shall operate to prevent any other criminal or civil proceedings to which the person storing the material in excessive quantity may be liable.

273. The Commissioners may, subject to the provisions of section 259, where it appears to be necessary for the prevention of danger to life or property, by public notice prohibit all persons from stacking or collecting hay, straw, timber, wood, thatching grass, jute or other dangerously inflammable materials, or from placing mats or erecting thatched huts or lighting fires in a place or within limits specified in the notice.

274. The Commissioners at a meeting may make by-laws consistent with this Act—

- providing for the guidance, discipline and conduct of the members of a volunteer fire-brigade recognized by the Commissioners;
- prescribing the officer to whom and the place at which the outbreak of a fire shall be reported;
- regulating, either by rendering licences necessary, or otherwise, the letting off of fire-arms, fire-works, fire-balloons or bombs; and
- generally making provision for the procedure and precautions to be adopted by the public on the occasion of a fire and for any other thing relating to fires in respect of which provision is necessary.

Stacking,
etc., of
inflammable
materials.

Power to
make
by-laws

(Sects. 275-278)

CHAPTER VIII

FOOD, DRINK AND DRUGS

Markets

275. The Commissioners at a meeting may provide land for the purpose of being used as a municipal market and may defray the cost of providing such land and all expenses necessary for the establishment of such market from the municipal fund, and may take a lease of any market;

Establishment of municipal markets.

and may charge rent, tolls and fees for the right to expose goods for sale in such market and for the use of shops, stalls and standings therein.

276. (1) The right of any person to use any place within the limits of a municipality, other than a municipal market, as a market or shop for the sale of animals, meat or fish intended for human food, or as a market for the sale of butter, ghi, fruit or vegetables shall be subject to by-laws (if any) made under section 291.

Licensing of markets and shops for sale of certain articles.

(2) Where any by-law is in force requiring a licence for the establishment or maintenance of a market or shop for the sale of any article mentioned in sub-section (1), the Commissioners shall not—

- (a) refuse a licence for the maintenance of market or shop lawfully established at the date of such by-law coming into force, if application be made within six months from such date, except on the ground that the place where the market or shop is established fails to comply with any conditions prescribed by, or under, this Act, nor
- (b) cancel, suspend or refuse to renew any licence granted under such by-law for any cause, other than the failure of the licensee to comply with the conditions of licence or with any provision of, or made under, this Act.

277. Any person who being the owner or occupier of any land, wilfully or negligently permits the same to be used as a market without such licence as may be required by a by-law made under section 291, shall be liable to a fine not exceeding two hundred rupees for every such offence, and to a further fine not exceeding forty rupees for each day during which the offence is continued after conviction of such offence.

Penalty for using unlicensed market.

278. The Magistrate, on the application of the Commissioners, may order any land, in respect of which a conviction shall have been obtained under the last preceding section, to be closed as a market-place, and whereupon may take order to prevent such land being so used; and every person who sells or exposes for sale animals, meat, or fish, intended for human food, or butter, ghi, fruit, or vegetables on any land which has been so closed, shall be liable to a fine not exceeding ten rupees.

Power to close unlicensed places.

THE BIHAR AND ORISSA

(Secs. 279-281)

[B. & O. Act]

Places for
slaughter of
animals for
sale.

Slaughter-houses

279. (1) The Commissioners at a meeting may, with the approval of the Magistrate, fix premises, either within or without the limits of the municipality, for the slaughter of animals, or animals of any specified description, for sale, and may with the like approval grant and withdraw licences for the use of such premises.

(2) When such premises have been fixed by the Commissioners beyond municipal limits, the Commissioners shall have the same power to make by-laws for the inspection and proper regulation of the same as if they were within those limits.

(3) When such premises have been fixed, no person shall slaughter any such animal for sale at any other place within the municipality.

(4) Any person who slaughters for sale any such animal at any other place within the municipality, shall be liable to a fine not exceeding twenty rupees for every animal so slaughtered.

Milk-supply

280. The Commissioners at a meeting may for the purpose of improving the supply of milk and milk products within the municipality—

- (a) provide and set apart grazing grounds, dairies and residences for dairymen and milk-sellers within the municipality;
- (b) with the sanction of the [Provincial Government]¹ acquire land for the purposes specified in clause (a) outside the limits of the municipality; and
- (c) charge such fees for the use of such grazing grounds, dairies and residences as may be fixed by by-law made in that behalf.

281. (1) The [Provincial Government]¹ may make rules consistent with this Act to—

- (a) prohibit the use of any place within a municipality for the purpose of the trade or business of a dairyman or as a dairy or for the sale of milk or milk products except under licence from the Commissioners;
- (b) prescribe and regulate the construction, dimensions, ventilation, lighting, cleansing, drainage and water-supply of dairies and cattle-sheds in the occupation of persons following the trade of dairymen or sellers of milk or milk products, and providing for the inspection of milch cattle, and for securing the cleanliness of milk

¹. Substituted by the A. O. for "L. G."

Powers to
take
measures
for the
improvement
of the milk
supply.Powers to
make rules
for the im-
provement
of the milk-
supply.

(Secs. 282-283)

- stores, milk shops and vessels used by such sellers or dairymen for milk and milk products;
- (c) prohibit the import into a municipality of milk and milk products except under a licence from the Commissioners; and
- (d) require notice to be given to the Commissioners whenever any milch cow or buffalo is affected with any contagious disease and prescribe precautions to be taken to protect milk against infection and contamination; and
- (e) make provision generally to prevent the adulteration of milk within the municipality.

(2) Rules made under this section shall not take effect in any municipality unless the Commissioners at a meeting have by resolution adopted them.

(3) Whoever contravenes any rule made under this section, or any condition of any licence granted under any such rule, shall be liable for every such offence to a fine not exceeding fifty rupees

Drugs

282. (1) No shop or place shall be kept for the retail sale of drugs recognized by the British Pharmacopoeia, not being also articles of ordinary domestic consumption, unless the same has been registered in the office of the Commissioners. The Commissioners shall, upon registration, grant the keeper of such shop or place a licence which he shall be bound to display in some conspicuous part of his premises.

Registry of
shops,
for sale
of drugs,
used in
Western
medical
science.

(2) Any keeper of such shop or place as is mentioned in sub-section (1) who fails to register the same within two months from the date of the establishment thereof, and any person who uses such shop or place without the same being licensed, shall be liable to a fine not exceeding one hundred rupees, and to a further fine not exceeding twenty rupees for each day during which the offence is continued after he has been convicted of such offence.

283. (1) No person shall compound, mix, prepare, dispense or sell any drug in any shop or place registered under the preceding section, unless he holds a certificate prescribed under any by-law that he is a fit person to be entrusted with such duties.

Com-
ounders'
certificates.

(2) Any person who, not being the holder of such certificate as is mentioned in sub-section (1), compounds, mixes, prepares or sells any drugs in any registered shop or place, shall be liable to a fine not exceeding fifty rupees;

1. The provisions of this section have been applied to all municipalities, as the E. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

THE BIHAR AND ORISSA

(Secs. 284-287)

(B. & O. Act)

and any owner, occupier or keeper of any such shop or place, who employs any such uncertified person to perform any one or more of such duties, shall be liable to a fine not exceeding two hundred rupees, and shall be further liable, at the discretion of the Magistrate, to forfeit his licence :

Provided that this section shall not come into operation until after the expiration of a period of six months from the publication of a notification to that effect by the [Provincial Government].

284. Nothing contained in section 282 or section 283 shall be construed to apply to the sale of drugs used by practitioners of indigenous medicines, whether recognized by the British Pharmacopoeia or not, when such drugs are not sold in a shop or place where medicines recognized by such Pharmacopoeia are dispensed upon prescription.

General Provisions

285. The Commissioners or any person authorized by them in behalf, may, at all reasonable times, enter into and inspect any market, building, shop, stall or place used for the sale or storage of articles intended for human consumption, or as a slaughter-house or for the sale of drugs, and inspect and examine any article of food or drink or any animal or drug which may be therein.

286. (1) If, in the course of the inspection of a place under the preceding section, an article of food or an animal appears to be intended for human consumption and to be unfit therefor, the Commissioners may seize and remove the same, and may produce it before Magistrate or, where the owner or person in whose possession the same is found consents, may cause it to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such consumption.

(2) If it is reasonably suspected that a drug has been improperly adulterated, or by reason of age or the effect of climate has become inert or unwholesome, or has otherwise become deteriorated in such manner as to lessen its efficacy, or to change its operation, or to render it noxious, the Commissioners may remove the same, giving receipt therefor, and may produce it before a Magistrate.

287. Any Magistrate, on the application of the Commissioners or any of their officers setting forth that there is just cause to believe that any article which has been rendered or has become noxious or unfit for human consumption is in the possession of any person for the purpose of being sold or offered or exposed for sale within the limits of a municipality, for such consumption, may grant a warrant to enter upon the premises of such person, and to search for and seize such article;

^{1.} Substituted by the A. O. for "L. G."

(Sects. 288-289)

and, if it appears to the said Magistrate that the same is noxious or unfit for such consumption, he shall order it to be forfeited and disposed of in such way as to him shall seem proper.

288. (1) Where any animal, article or drug is brought before a Magistrate under section 286 or 287, such Magistrate, if he is satisfied on the evidence that the article or animal was intended for human consumption and is unfit therefor or that the drug is adulterated in such manner as to lessen its efficacy or to change its operation, or to render it noxious, may order the article or animal to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for human consumption, or the drug to be dealt with as he may think fit, and may direct that the owner or person in possession of such article, animal or drug, not being merely a carrier or bailee thereof, shall be punished with fine which may extend to one hundred rupees.

Power of
Magistrate
to order
destruction
of noxious
article,
animal or
drug and
to punish
offender.

(2) If it appears to the said Magistrate that a drug removed under section 286 is not adulterated or has not become inert, unwholesome or deteriorated as aforesaid, the person from whose shop or place it has been taken shall be entitled to have it restored to him, and it shall be in the discretion of the said Magistrate to award him such compensation as he may think proper, not exceeding the actual loss which has been sustained.

(3) If the drug removed as aforesaid is not brought before a Magistrate, it shall be restored to the person from whose shop or place it was taken, and such person shall be entitled to compensation for any actual loss which he may have sustained by the removal of the said drug.

289. (1) Every owner, occupier or farmer of a market or of any place for the sale of meat, ghi, butter, fish or vegetables, or of any slaughter-house, within the limits of a municipality, shall cause such drains to be made therein as shall be considered sufficient by the Commissioners, and, if required to do so by the Commissioners, shall cause all the floors and drains to be made dry, and shall also cause a supply of water to be provided for keeping such market, place or place in a wholesome state.

Drainage of
markets,
slaughter-
houses, etc.

(2) Any such owner, occupier or farmer who, after notice in writing given by the Commissioners that such market, place or place is not in accordance with the particulars specified in the notice, fails to remedy the defect specified within such time as may be specified in the notice, makes default therein, and fails to pay a sum exceeding one hundred rupees, for every day during which the market, place or place remains in a state of disrepair beyond the expiration of the time specified in the notice, shall be liable to a fine which may extend to one hundred rupees.

(Secs. 290-291)

Power to open food depots, etc., in case of emergency.

Power to make by-laws to regulate the sale of food and drugs.

290. Whenever an emergency arises which in the opinion of the Commissioners makes it advisable to open depots for the sale of food-stuffs, fuel, cloth and other similar necessities of life, they may, with the previous sanction of the [Provincial Government]¹, and subject to such conditions and limitations as the [Provincial Government]¹ may determine, open such depots for such purpose.

291. The Commissioners at a meeting may make by-laws consistent with this Act—

- (a) prohibiting, subject to the provisions of section 276, the use of any place as a slaughter-house, or as a market or shop for the sale of animals, meat or fish intended for human food, or as a market for the sale of butter, ghee, fruit or vegetables, without a licence granted by the Commissioners or otherwise than in accordance with the conditions of a licence so granted;
- (b) prescribing the conditions subject to which, and the circumstances in which and the areas or localities in respect of which, licences for such use may be granted, refused, suspended or withdrawn;
- (c) providing for the inspection of, and regulation of the conduct of business in a place used as aforesaid, so as to secure cleanliness therein or to minimize any injurious, offensive or dangerous effect arising or likely to arise therefrom;
- (d) in a municipality where a reasonable number of slaughter-houses has been provided or licensed by the Commissioners, controlling and regulating the admission within municipal limits, for purposes of sale, of the flesh (other than cured or preserved meat) of any cattle, sheep, goats or swine slaughtered at a slaughter-house or place not maintained or licensed under this Act;
- (e) prescribing the fees to be paid for the use of municipal grazing grounds, dairies and residences;
- (f) prescribing the qualifications and certificates to be possessed by compounders and dispensers of drugs for the purposes of section 283;
- (g) regulating the sale or the manufacture, preparation, storage or exposure for sale of any specified article of food;
- (h) regulating the hours and manner of transport within the municipality of any specified article of food;
- (i) prescribing the standard weights and measures to be used within the municipality, and providing for the inspection of the same; and
- (j) fixing the fees for the grant of any licence under this Chapter.

1. Substituted by the A. O. for "L. G."

(Secs. 292-293)

CHAPTER IX

WATER-SUPPLY, LIGHTING, DRAINAGE AND SEWERAGE SYSTEMS
Introduction of Schemes

292. Subject to the provisions of section 293 and 294 and of such rules as may be made under section 325, the [Provincial Government]¹ may, on application of the Commissioners of any municipality at a meeting, or of such Commissioners acting conjointly with any other local authority, sanction a scheme for water-supply, or for the introduction of a system of lighting by electricity, gas or otherwise, or of drainage or sewerage [or for the extension of any such scheme or system to new areas]².

Application for sanction to a scheme for water-supply, lighting, drainage or sewerage.

293. Before any scheme or joint-scheme for any of the purposes mentioned in section 292 is sanctioned by the [Provincial Government]¹, there shall be published³ in the [Official Gazette]⁴ and locally in accordance with the provisions of section 356, the following particulars—

Publication of scheme.

- (a) a general description of the scheme ;
- (b) an estimate of the cost of carrying it out ;
- (c) an estimate of the cost of maintaining it ;
- (d) the sources from which the cost will be met ;
- (e) the amount of the loan, if any, proposed to be taken by the Commissioners or local authority, the annual instalments by which it will be repayable, and the number of years required to repay it ;
- * * * * *
- (f) the total annual charge to be incurred by reason of the water-supply or system of lighting [or system of drainage or sewerage]⁵ and to be met by a water-tax, [lighting tax or drainage tax]⁶ ;
- (g) the percentage of such tax on the annual value of holdings ; and
- (h) the average incidence of such tax per head of the population.

1. Substituted by the A. O. for "L. G."

2. Inserted by the B. and O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 15.

3. For an instance of a notification under this section, see the B. & O. Local Statutory Rules and Orders, Vol I, Pt. VII.

4. Substituted by the A.O. for "Gazette".

5. The wo
of water-supply
(Amendment)

6. Inserted by *ibid.* s. 16 (b).

7. Substituted by *ibid.* for "or lighting tax"

THE BIHAR AND ORISSA
(Sects. 294-297)

(B. & O. Act)

Sanction of scheme.

294. After the expiry of two months from the date of such publication, and after considering any objections or suggestions that may be submitted, the [Provincial Government]¹ may—
 (a) sanction the scheme, or
 (b) add to, alter, or modify the scheme, and sanction the scheme so added to, altered or modified, or
 (c) reject the scheme :

Provided that, if any addition to, or alteration or modification of, the scheme has the effect of increasing the share of the cost to be defrayed from the municipal fund, or, in the case of a joint-scheme, from the fund of any local authority concerned, or from a loan, the particulars enumerated in the last preceding section shall not be sanctioned until after the expiry of two months from the date of such publication and until any objections or suggestions that may be submitted have been considered.

Powers of Government to cause scheme to be prepared.

295. The [Provincial Government]¹ may, if it considers it necessary to do so, cause a scheme for any of the purposes mentioned in section 292 to be prepared for any municipality, or for a municipality and an area or areas under the control of one or more local authorities, by such officer as it may depute for the purpose.

Power to require Commissioners to adopt scheme.

296. (1) When a scheme has been prepared for a municipality under the last preceding section, the [Provincial Government]¹ may call upon the Commissioners of such municipality to show cause at a meeting why they should not be required to carry out the scheme, and suggestions which may be submitted by the Commissioners and may, subject to the provisions of sections 293 and 294, sanction the scheme:

Provided that, if at any time before the scheme is sanctioned, a resolution against the introduction of the scheme is passed, at a meeting of the Commissioners specially convened for the purpose, in favour of which a majority of not less than two-thirds of the Commissioners have voted no further action shall be taken by the [Provincial Government]¹ under this section.

297. The [Provincial Government]¹ may order the works specified in any scheme or joint-scheme sanctioned under section 294 or section 296 to be executed by an officer to be appointed by it, and shall fix the remuneration of such officer (provided that the cost of the scheme as sanctioned be not exceeded) and may specify a period within which the work shall be completed, and may extend such period from time to time as may be necessary.

¹. Substituted by the A. O. for "L. G."

Power to appoint an officer to execute the work.

(Secs. 298-301)

298. When a scheme or joint-scheme is prepared by an officer deputed by the [Provincial Government]¹ for the purpose, the expenses incurred by him in the preparation of the scheme and the cost of carrying out the scheme, if sanctioned, may be advanced from the public funds on the security of the fund or funds of the municipality or local authority concerned, and such advance shall be recoverable under the Local Authorities Loans Act, 1914², and all the provisions of that Act and the rules made thereunder referring to the recovery of loans shall be applicable to such advance.

Advance
from public
funds of
cost of
scheme pre-
pared by a
deputed
officer.

299. When a scheme has been sanctioned by the [Provincial Government]¹ under section 294 or section 296, the Commissioners of the municipality, or the Commissioners conjointly with another local authority, or a joint-committee constituted under section 51, shall, if the tax or other monies to be collected, received or recovered for or in respect of the supply of water or the lighting, drainage or sewerage system be sufficient for the purpose, and subject to the provisions of section 297, proceed to carry it out, or cause it to be carried out.

Carrying out
of scheme
after
sanction

*General Provisions relating to the Laying and Connecting of Pipes,
Drains and the like*

300. The Commissioners may carry any pipe, drain, cable, wire or channel of any kind for the purpose of providing or of carrying out and establishing or maintaining a system of water-supply, lighting, drainage or sewerage, through, across, under or over any road, or place laid out as or intended for a road, and, after giving reasonable notice in writing to the owner or occupier, into, through, across, under, over or up the side of any land or building whatsoever situate within the limits of the municipality, and, for the purpose of introduction, distribution or outfall of water or for the removal or outfall of sewage, without such limits, and may at all times do all acts and things which may be necessary or expedient for repairing or maintaining any such pipe, drain, cable, wire or channel, as the case may be, in an effective state for the purpose for which the same may be used or intended to be used:

Power of
Com-
mis-
sioners
to lay or
carry wire,
pipes,
drains, etc.,
through
private
land.

Provided that no nuisance more than is necessarily caused by the proper execution of the work is created by any such operation; and

Pr
the own-
directly

301. In the event of any pipe, drain, cable, wire or channel being laid or carried above the surface of any land or through, over or up the side of any building, such pipe, drain, cable, wire or channel, as the case may be, shall be so laid or carried as to interfere as little as possible with the rights of the owner or occupier to the due enjoyment of such land or building, and reasonable compensation shall be paid in respect of substantial interference with any such right to such enjoyment.

Wire,
pipes,
drains, etc.,
laid or
carried
above
surface of
ground.

1. Substituted by the A. O. for "L. G."

2. Printed in Central Acts, Vol. VI, p. 495.

THE BIHAR AND ORISSA

(B. & O. Act)

(Secs. 302-306)

Previous notice to be given.

Power to permit connections to houses and lands

Power to make or require connections in certain cases

Power to establish meters and the like.

Inspection and supervi-
sion of connec-
tions.

302. Except in cases to which section 307 relates, the Commissioners shall cause not less than fourteen days' notice in writing to be given to the owner or any occupier before commencing any operations under section 300.

303. Subject to the prescribed conditions and restrictions and to such terms as the Commissioners at a meeting may from time to time determine, the Commissioners may—

(a) on the application of the owner or occupier of any house or land paying water-tax or lighting-tax, as the case may be, make or cause or permit to be made, communication or connections from any main distribution pipes, cable or wire belonging to the Commissioners for the purpose of leading water, electricity or gas to such house or land,

(b) on the application of the owner or occupier of any house or land, make, or cause or permit to be made, any connection or communication to such house or land from any drains, or channel constructed or maintained by or vested in the Commissioners, and

(c) require the amount necessary for the execution of such work through their own agency to be paid or deposited before such work is executed by them.

304. In any municipality to which the provisions of this section may at any time by notification be extended by the [Provincial Government], the Commissioners may, at any time, establish any connection or communication from any water-main or drain to any house or land, or may by notice require the owner or occupier of any such house or land to establish any such connection or communication, in such manner and within such time as the Commissioners, by notice in that behalf, may prescribe, at the cost of such owner or occupier.

305. (1) The Commissioners may establish meters or other appliances for the purpose of testing the quantity of water or the quantity or quality of any gas or electricity supplied to the house or land of any person, or to, or for the use of, any person or business.

(2) The cost of providing or attaching a meter or other appliance under sub-section (1) shall be paid out of the municipal fund.

306. The ferrules, communication pipes, connections, meters, stand-pipes, and all fittings thereon or connected therewith, leading from mains or distribution cables, wires, pipes, drains or channels into any house or land, and the wires, pipes, fittings and works inside any such house or within the limits of any such land, shall in all cases be executed subject to the inspection and to the satisfaction of the Commissioners.

(Secs. 307-311)

307. (1) Any officer authorized in that behalf by the Commissioners may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land for the purpose of inspecting or repairing any water, gas, electric or other installation, and for taking readings of meters connected therewith.

Power to enter premises.

(2) If such officer at any such time is refused admittance into such house or land for the purposes aforesaid, or is prevented from making such examination, the Commissioners may forthwith cut off the supply of gas, water or electricity, as the case may be, from such house or land :

Provided that nothing hereinbefore contained shall authorize an entry into any room appropriated for the zenana or residence of women, which by the custom of the country is considered private, unless a notice in writing of not less than four hours is given.

308. Whenever water, electricity or gas is supplied under this Chapter through a meter, it shall be presumed that the quantity or quality indicated by the meter has been consumed until the contrary is proved.

Presumption as to correctness of meter.

309. When any meter attached to the communication pipe or connection of any house or land is out of order or under repair, the Commissioners shall forthwith replace it by another.

Commissioners to replace damaged meter.

310. (1) If the owner or occupier of any house or land to which water, electricity or gas is supplied through a meter desires to have the meter tested, he may send a written application to the Commissioners, and such application shall be accompanied by a fee of five rupees.

Testing of meter.

(2) Upon receipt of any such application and fee, the Commissioners shall forthwith cause such meter to be tested, at a time and place to be specified in a notice to be served upon such owner or occupier.

(3) If such meter is found, upon being so tested, to be incorrect by more than two per cent., the said fee shall be returned to the person who sent it.

311. Any person who fraudulently—

Penalty for fraud in respect of meter.

(a) alters the index to any meter, or prevents any meter from duly registering the quantity or quality of water, electricity or gas supplied, or

(b) abstracts or uses water, electricity or gas before it has been registered by a meter set up for the purpose of testing the quantity or quality of the same,

shall be liable to a fine not exceeding one hundred rupees.

(Secs. 312-317)

Penalty for
injuring
meter.

312. Any person who wilfully or negligently injures or suffers to be injured any meter or any of the fittings of any meter shall be liable to a fine not exceeding one hundred rupees.

The Com-
missioners
to provide
water-
supply.*Special Provisions relating to Water-supply*

313. In any municipality in respect of which a scheme for a supply of water has been sanctioned under section 294 or section 296, and in which a water-tax is imposed by the Commissioners, the Commissioners shall provide a supply of water for domestic purposes within the limits of the municipality, and for this purpose shall cause such mains and pipes to be laid, and such tanks, reservoirs or other works to be made and constructed, as shall be necessary for the supply of water in the chief public roads; and they may also erect in all such roads sufficient and convenient stand-pipes or pumps for the use of the inhabitants of the municipality for domestic purposes.

Maintenance
of supply
of water.

314. The Commissioners at a meeting shall determine what supply of water for domestic purposes shall be maintained in their distribution pipes and mains, and during what hours such supply shall be continued; and any rule made under this section shall be published in such manner as the Commissioners may direct, and shall not be altered except with the sanction of the Commissioners at a meeting.

Provided that where, in the opinion of the [Provincial Government], the supply of water provided by the Commissioners in any municipality is defective or insufficient, the [Provincial Government] may require the Commissioners to provide such supply and at such hours as may be prescribed.

Supply for
business.

315. The Commissioners may supply water for purposes other than domestic purposes, and may, subject to such charges, at the rates prescribed, as may have been fixed by the Commissioners at a meeting, cause or allow to be laid down, the necessary pipes and works of such dimensions and character as may be approved by them.

Charge for
water
supplied.

316. When Communication pipes have been laid down for the purpose of leading water into any house or land, the Commissioners at a meeting may, subject to such rate or rates as may be prescribed, determine the charges to be levied from the occupiers of such house or land for all water consumed:

Provided that the Commissioners shall deduct from the charges on account of the water supplied in any month, one-twelfth of the water-tax assessed on the holding.

317. (1) The Commissioners may cause the water to be turned off from any house or land which is supplied with water, after giving notice in writing of not less than twenty-four hours,—

- (a) if the house or land is unoccupied,
- (b) if the person supplied with water neglects to pay the

Power to
turn off
water.

1. Substituted by the A. O. for "L. G."

(Secs. 318-319)

water-tax or the charge made for water supplied at the due time for the payment thereof, or fails to pay for the cost of a meter,

(c) if any pipes, works or fittings connected with the supply of water to such house or land are found on examination by any officer of the Commissioners authorized in that behalf, to be out of repair to such an extent as to cause waste of water, or

(d) if the owner or occupier of such house or land wilfully or negligently misuses, or causes waste or contamination of water,

and may recover from the owner or occupier of such house or land, or from the person liable to pay the water-tax or charge, as the case may be, the expenses incurred in turning off the water :

Provided that the stopping or cutting off the supply of water shall not relieve any person from any penalty or liability which he may have incurred.

(2) When the water has been turned off under clause (b) of sub-section (1) of this section, the Commissioners shall restore the supply on payment of all sums for non-payment of which the water was turned off, together with the expenses incurred in turning off the water and the expenses (if any) to be incurred in restoring the supply.

318. (1) Before a connection for the supply of water from the distribution pipes of the Commissioners to any house or land is sanctioned, the Commissioners shall cause all the works, pipes and fittings within the said house or land to be inspected by an officer appointed by them in that behalf.

Inspection
of works
and pipes
before
connection

(2) The cost of such inspection shall be payable in advance by the person applying for such connection at such rates as the Commissioners at a meeting shall from time to time direct.

(3) Until such officer has certified to the Commissioners that the works, pipes and fittings have been executed and put up in a satisfactory manner, a connection with the Commissioners' distribution pipes shall not be permitted.

(4) Notwithstanding anything contained in this section, if at any time after a certificate has been granted under sub-section (3), the Commissioners are satisfied that any work, pipe or fitting is unsuitable or results in a waste of water, the Commissioners may require the person who provided such work, pipe or fitting, or the owner of the house or land, to alter or add to it at his own cost.

319. No work for introducing a supply of water to any house shall be commenced by the owner without sending a specification and estimate of the cost thereof to the occupier nor by the occupier without sending such specification and estimate to the owner.

Estimate
and speci-
fication of
works to be
sent.

THE BIHAR AND ORISSA

(Secs. 320-325)

{B. & O. Act}

Permission
to person
outside the
municipality
take
water.
Penalty for
causing
waste of
water.

320. It shall be within the discretion of the Commissioners to allow any person not residing within the limits of the municipality to take or be supplied with water for domestic use, on such terms as the Commissioners at a meeting may from time to time prescribe.

321. (1) The occupier of any house or land in which water supplied by the Commissioners under this Chapter is, from negligence or other circumstances under the control of the said occupier, wasted, or in whose house or land the pipes, works or fittings for the supply of water are found to be out of repair to such an extent as to cause waste of water, shall be liable to a fine not exceeding twenty rupees.

(2) Any person otherwise causing waste of water supplied by the Commissioners shall be liable to a fine not exceeding five rupees;

Penalty for
diverting or
obstructing
water.

322. Any person who unlawfully flushes, draws off, diverts or takes water from any water-works belonging to, or under the control of, the Commissioners, or from any water or streams by which such water-works are supplied, shall be liable to a fine not exceeding one hundred rupees.

323. Any person who takes or causes to be taken for use, outside the limits of the municipality, water supplied by the Commissioners, without the permission of the Commissioners, shall be liable to a fine not exceeding fifty rupees.

Penalty for
keeping
water out-
side municip-
ality with-
out
permission.
Owner to
bear the
cost of keep-
ing works in
repair.

324. Except in the case of a special agreement to the contrary, the owner of any house or land shall bear the expense of keeping all works connected with the supply of water to such house or land [and all pipes, works or fittings forming part of any connection between such house or land and the sewerage system] in substantial repair, and if he fails to do so, the occupier may, after giving the owner three days' notice in writing, himself have the repairs executed and deduct the expenses thereof from any rent which is due from him to the owner in respect of such house or land.

Rules

Power to
make rules

325. The [Provincial Government]¹ may make rules² consistent with this Act to regulate—

(a) the preparation by the Commissioners or by a joint-commi-
ttee constituted under section 51, or by an officer

1. Inserted by the B. and O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 17.

2. Substituted by the A. O. for "L. G."

3. For rules made under the various clauses of this section, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

(Sec. 325)

deputed for the purpose of schemes for water-supply, lighting, drainage or sewerage;

- (b) the procedure to be followed in obtaining the sanction of the [Provincial Government]¹ to such schemes;
- (c) the manner of carrying out such schemes;
- (d) the size and nature of the water-works, mains, pipes, cables, wires, drains, or channels to be constructed or laid by the Commissioners for the supply of water, electricity or gas, or for drainage or sewerage;
- (e) the maintenance of municipal water-works and of pipes and fittings in connection therewith;
- [(ee) the maintenance of municipal drainage and sewerage systems and of all drains, pipes and fittings connected therewith;]
- (f) the size and nature of the stand-pipes or pumps to be erected by the Commissioners and of the ferrules and fittings for the regulation of the supply of water, gas or electricity;
- (g) the mains or pipes in which fire-plugs are to be fixed and the places at which keys of the fire-plugs are to be deposited;
- (h) the periodical analysis by a qualified analyst of the water supplied by the Commissioners;
- (i) the ~~removal and prevention of injury or contamination~~ without the limits of the municipality,

- (j) the manner in which connections with water-works or with the lighting, drainage or sewerage system of the Commissioners may be constructed or maintained and the agency which shall or may be employed for such construction or maintenance;
- (l) the rates at which the charges for water, gas or electricity supplied may be levied by the Commissioners;
- (l) the regulation of all matters and things connected with the supply and use of water, electricity or gas, and the turning on and turning off and preventing the waste of water, electricity or gas; and
- (m) any other matter relating to the supply of water, electricity or gas or of drainage or sewerage in respect of which this Act makes no provision or insufficient provision and further provision is, in the opinion of the [Provincial Government]¹ necessary:

¹. Substituted by the A. O. for "L. G."

² Inserted by the B. and O. Municipal (Amendment) Act, 1930 (B. & O. Act III of 1930), s. 18.

Provided that no rule shall be made under this section affecting a cantonment or a part of a cantonment without the previous sanction of the [Central Government].

CHAPTER X

VEHICLES FLYING FOR HIRE

Power to make by-laws to regulate motor cars and vehicles plying for hire.

²[326. (1) The Commissioners at a meeting may make by-laws to regulate motor cars and vehicles used for the conveyance of passengers which are kept or are offered or ply for hire within the municipality whether by time or by distance, and may by such by-laws provide for all matters relating to such motor cars and vehicles in respect of which this Act makes no provision or insufficient provision and provision is declared by the Commissioners, with the sanction of the [Provincial Government]³ to be necessary :

Provided that such by-laws shall not—

- (a) apply to any motor car or vehicle used on a Railway or tramway ; and
- (b) impose any fees for the registration of motor cars or for the grant of a licence to drive a motor car.

(2) In particular and without prejudice to the generality of the foregoing power, such by-laws may—

- (a) require the drivers of such motor cars and vehicles to take out licences and declare by whom, for what period and subject to what conditions such licences may be granted and revoked;
- (b) require the owners of such motor cars and vehicles and of the animals used to draw such vehicles to register the same and to notify any change of ownership, and to declare by whom, in what manner and in what classes such motor cars, vehicles and animals may be registered, and empower the registering officer to refuse to register any motor car or vehicle or animal which is unfit to be registered in the class in which the owner has applied to register it;
- (c) declare the fees which shall be payable for licences to drive such vehicles and for the registration of such vehicles and of the animals required to draw them;
- (d) provide for facilitating the identification of such motor cars and vehicles and animals and of licensed drivers by the display of names, number plates or tickets or in any other manner;

1. Substituted by the A. O. for "G. G. in C."

2. Substituted by the B. and O. Motor Vehicles Taxation Act, 1930 (B. & O. Act II of 1930), s. 3 and first Sch.

3. Substituted by the A. O. for "L. G."

(Secs. 327-328)

- (e) prescribe the conditions subject to which such motor cars and vehicles may be plied for hire in public places;
- (f) prescribe and limit the fares which the owners or drivers of any such motor cars or vehicles may be entitled to demand and to take for the hire of such motor cars or vehicles and the manner in which a list of fares shall be displayed in or on such motor cars or vehicles;
- (g) limit the loads to be carried by such motor cars and vehicles or by any class of such motor cars and vehicles;
- (h) provide for the preparation and publication of a table of distances;
- (i) provide for the protection of weak, lame and sickly horses; and
- (j) provide generally for the prevention of danger, injury or annoyance to the public or any person or of danger or injury to property or of obstruction to traffic.]

327. The [Provincial Government]¹ may, by notification,² include in any municipality for the purposes of this Chapter any area in the vicinity of the same and defined in the notification, [not being a cantonment or part of a cantonment]³.

Inclusion of additional area.

328. (1) Any person who for the purposes of deception uses, wears or has in his possession any plate or ticket resembling or intended to resemble a plate or ticket required by a by-law under section 326 to be affixed to [any motor car or vehicle]⁴ or to be carried or worn by the driver thereof, shall be liable to a fine not exceeding two hundred rupees.

Fraudulently using or possessing counterfeited plate or ticket.

(2) Any police officer or any person empowered in this behalf by the Commissioner of Police may search any vehicle for any plate or ticket used, worn or carried thereon, and if any such plate or ticket is found, the same may be seized and may be produced in evidence.

1. Substituted by the A. O. for "L. G."

2. For notification under this section, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

3. It is provided that when the area to be included in a municipality, the notification in respect thereof shall be issued with the previous sanction of the Governor.

4. Substituted by the B. and O. Motor Vehicles Taxation Act, 1930 (B. & O. Act II of 1930), s. 3 and First Sch., for "any vehicle".

(Secs. 329-333)

**Production
of licence
before
Magistrate.**

329. A licensed driver who is summoned before a Magistrate to answer any charge preferred against him under this Chapter or any by-law framed thereunder shall carry with him his licence and produce the same if required to do so, and any driver who on such re-^{quest} fails to produce such licence shall be liable to a fine not exceeding five rupees.

**Endorse-
ment of
conviction
on driver's
licence.**

330. On the conviction of a licensed driver of an offence under this Chapter or any by-law framed thereunder, a Magistrate may endorse on the licence of such driver the nature of the offence, the date of conviction and the amount of penalty inflicted.

**Revocation
or suspen-
sion of
driver's
licence on
conviction.**

331. (1) On the conviction of a licensed driver of an offence whether under this Act or under any other Act, a Magistrate may revoke the licence of such driver or suspend the same for such time as the Magistrate thinks proper, and for that purpose may require the driver or any other person in whose possession such licence and any ticket thereto belonging may be, to deliver up the same.

(2) Any driver or other person who being so required refuses or neglects to deliver up such licence and such ticket shall be liable to a fine not exceeding twenty rupees.

(3) Every licence and every ticket so delivered shall be forwarded by the Magistrate to the Commissioners together with a memorandum of the sentence in the case.

to the person to whom it was granted.

**Penalty on
driver for
refusing to
attend at
premises of
owner.**

332. Any driver employed as such by the owner of any registered motor car or vehicle¹ who, without sufficient excuse, refuses or neglects to attend at the premises of such owner for the purpose of such driving [such motor car or vehicle]² shall, on complaint by such owner, be liable for each offence to a fine not exceeding ten rupees, which or any part of which, may by order of the Magistrate, be paid to the owner as compensation.

**Penalty for
refusing to
let vehicle
for hire.**

333. Any owner or driver of a registered motor car or vehicle¹ who without sufficient excuse refuses to let [such motor vehicle]² for hire, shall be liable for every such offence to a fine not exceeding fifty rupees, which or any part of which, may by order of the Magistrate be paid to the person aggrieved by the refusal.

1. Substituted by the B. and O. Motor Vehicles Taxation Act, 1930 (Act II of 1930), s. 3 and First Sch. for "registered Vehicle".

2. Substituted by id. for "motor vehicle".

(Secs. 334-337)

334. (1) When a complaint is made before a Magistrate against the driver of a [registered motor car or vehicle]¹ for any offence committed by him against the provisions of this Chapter or of any by-law framed thereunder, such Magistrate may summon the owner of [such motor car or vehicle]² personally to appear and to produce the driver of [such motor car or vehicle]² to answer the complaint.

Power to
summon
owner to
appear and
to produce
driver.

(2) If such owner having been so summoned, without a reasonable excuse, neglects or refuses to appear to produce the driver according to the summons, he shall be liable to a fine not exceeding fifty rupees, and so from time to time, as often as he shall be so summoned, until such driver be produced by him :

Provided that, if such owner, without a reasonable excuse, neglects or refuses to appear and produce the driver on the second or any subsequent summons requiring him to do so, the Magistrate may proceed to hear and determine the complaint in the absence of the owner or driver or either of them.

335. If any person who has hired a [registered motor car or vehicle]¹ refuses to pay to the owner or driver thereof on demand the fare payable under by-laws framed under this Chapter, the Magistrate may order payment by such person of such fare and also of such compensation for loss of hire as may seem reasonable, and in default of payment, such fare and compensation may be recovered in the same way as a fine.

Procedure
on refusal
to pay fares.

336. Any person who, having used any [registered motor car or vehicle]¹, attempts to evade payment of the fare or any portion of the same which he may be deemed liable to pay shall be liable to a fine not exceeding fifty rupees, in addition to the payment of such fare and compensation as is mentioned in section 335.

Penalty
for fraudu-
lent evasion
to pay fares.

337. In the case of any dispute between the hirer and driver of a [registered motor car or vehicle]¹ the hirer may, if any Magistrate be then sitting, require the driver to drive to the court of such Magistrate, or if no Magistrate be then sitting, to the registering officer, and if the driver refuses to obey such requisition, the hirer may give the driver into the custody of the nearest police officer ; and such police officer shall thereupon take the driver and the hirer together with [such motor car or vehicle and the horses by which such vehicle is drawn]² to such Magistrate or registering officer, and the Magistrate or registering officer, as the case may be, shall hear and determine the dispute in a summary way.

Settlement
of disputes.

1. See foot-note 1 on p. 493, ante.

2. Substituted by the B. and O. Motor Vehicles Taxation Act, 1930 (B. & O. Act II of 1930), s. 3 and First Sch. for "the vehicle".

3. Substituted by *ibid* for "the vehicle and horses (if any)".

THE BIHAR AND ORISSA

(Secs. 338-341)

(B. & O. Act)

Damages to
property of
Commissioners
and others

338. (1) If through any act, neglect or default on account whereof any person has been fined under this Chapter or any by-laws framed thereunder, any damage to the property of the Commissioners has been committed by such person, he shall be liable to make good such damage as well as to pay such fine.

(2) The amount of such damage shall be determined by the Magistrate by whom such person has been fined, and in default of payment of the amount of such damage on demand, the same may be levied in the same manner as a fine.

Duties of
Education
Committee,CHAPTER XI
MISCELLANEOUS
Education

339. It shall be the duty of an Education Committee appointed under section 49, subject to the control of the Commissioners and to the rules made by the [Provincial Government]¹,

- (i) to superintend all matters connected with the finance, accounts, maintenance, management and teaching of all schools maintained by the Commissioners, and
- (ii) to determine the conditions to be complied with when grants are made by the Commissioners to schools.

340. (1) The [Provincial Government]¹ may from time to time transfer to the Commissioners such funds as it may deem necessary for expenditure on—

- (a) the improvement of any school or class of schools within the municipality under private management; and
- (b) the maintenance or improvement of any school or class of schools maintained and managed by the Commissioners; and
- (c) the provision of buildings to be used as students' hostels in connection with any school mentioned in clauses (a) and (b).

(2) The Commissioners shall be charged with and be responsible for the proper distribution of funds transferred under sub-section (1).

341. The [Provincial Government]¹ may make rules² consistent with this Act—

- (i) determining the classes of schools which may be maintained or aided by the Commissioners;

1. Substituted by the A. O. for "L. G."

2. For rules made under this section, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

Powers to
make rules
regarding
maintenance
and manage-
ment of
schools.

(Sects. 342-346)

- (ii) regulating the construction and repair of buildings connected with such schools, including hostels;
- (iii) regulating the appointment and salaries of masters and assistant masters of such schools, and
- (iv) regulating the establishment of scholarship generally, or for the furtherance of technical or any other special form of education.

The Local Self-Government Board

1342

* * * *

Sarais and Dharmasalas

343. The Commissioners at a meeting may make by-laws consistent with this Act providing—

- (a) for the registration and inspection of *sarais*, *dharma-salas* and other public hostels within the municipality;
- (b) for the prevention of overcrowding and the promotion of cleanliness and ventilation therein;
- (c) for the notices to be given and the precautions to be taken in the case of the outbreak therein of any infectious or contagious disease; and
- (d) generally for the proper regulation of *sarais*, *dharma-salas* and other public hostels.

Registration of Births and Deaths

344. The Commissioners of any municipality, when required by the [Provincial Government]¹ to do so, shall provide for the registration of births and deaths within the limits of the municipality in accordance with the provisions of the Bengal Births and Deaths Registration Act, 1873,² or any other similar Act for the time being in force.

Power of
Commissioners to
regulate
sarais and
dharma-salas
by by-laws.

Registration
of births and
deaths.

345. The [Provincial Government]² may require the Commissioners of any municipality to appoint and maintain at any burning-ghat or burial-ground a Sub-Registrar for the registration of all corpses brought to such burning-ghat or burial-ground for cremation or interment.

Appointment
of
Sub-
Registrars
at burning-
ghats and
burial-
grounds.

346. Whenever a Sub-Registrar has been appointed for any burning-ghat or burial-ground under the last preceding section, information of the particulars required by section 8 of the Bengal Births and Deaths Registration Act, 1873,³ to be known and registered may be given in respect of the death of any person whose body is brought to such burning-ghat or burial-ground for cremation or interment to such Sub-Registrar, and information so given shall

Information
required by
Bengal Act
IV of 1873
to be given
to such
Registrar.

1. Section 342, omitted by the A. O.

2. Substituted by *ibid* for "L. G."

3. Printed in Vol. II of this Code, p. 117.

THE BIHAR AND ORISSA

[B. & O. Act]

(Sects. 347-349)

be deemed to be information given to the Registrar of the District as required by the said section.

Section 9 of the said Act shall be applicable to all Sub-Registrars appointed under this Act

information
of deaths
in hospitals

347. Whenever a death occurs in any hospital within the limits of any municipality in respect of which the [Provincial Government]¹ has directed that all deaths shall be registered under the Bengal Births and Deaths Registration Act, 1873,² it shall be the duty of the medical officer in charge of such hospital forthwith to send a notice in writing of the occurrence of such death to the Commissioners in such form as the [Provincial Government]¹ may prescribe, and in such case no other person shall be required to give information of such death to a Registrar under the said Act or to a Sub-Registrar under this Act.

owner to require dogs to carry tokens and orders of those without them disposal of dead and stray dogs.

348. The Commissioners may, by public notice, require that every dog in respect of which a tax has been paid, or that every registered dog, shall wear a collar to which shall be attached a token to be issued by the Commissioners, and may from time to time give notice that with effect from a date to be specified in the notice every dog found within the municipality without a collar bearing such token will be destroyed.

349. (1) The Commissioners, or any person authorized by them in this behalf, may—

(i) destroy or cause to be destroyed, or confine, or cause to be confined, for such period as the Commissioners may direct, any dog suffering from any loathsome disease or from rabies, or reasonably suspected to be suffering from rabies; or bitten by any dog or other animal suffering or suspected to be suffering from rabies;

(ii) confine, or cause to be confined, any dog found wandering about roads or public places without a collar or other marks distinguishing it as private property, and charge a fee for such detention, and destroy or otherwise dispose of any such dog if it is not claimed within one week and the fee paid; and

(iii) appoint from time to time, by public notice, certain periods within which any dogs without collars or other marks distinguishing them as private property, found straying on the roads or beyond the enclosures of houses of the owners of such dogs, may be destroyed, and destroy or cause them to be destroyed accordingly.

(2) No damages shall be payable in respect of any dog destroyed or otherwise disposed of under this section.

1. Substituted by the A. O. for "L. G."

2. Printed in Vol. II of this Code, p. 144

(Secs. 350-354)

350. The Commissioners at a meeting may offer rewards for the destruction of noxious animals within the limits of the municipality.

Rewards
for destruc-
tion of
noxious
animals.

Licences

351. (1) Every person to whom a licence has been granted under this Act shall, at all reasonable times, while such licence remains in force, if thereunto required by the authorities which granted the licence or by any person authorized by them in that behalf, produce such licence to the said authorities or to the person so authorized.

Holder of
licences to
produce it
when
required.

(2) Any person who fails to produce his licence when required to produce the same by any person authorized under this section to demand the production thereof shall be liable to a fine not exceeding one hundred rupees.

352. Any Magistrate before whom any person is convicted of an offence contrary to the provisions of this Act, relating to the use of any place for a purpose for which a licence is required, or of the non-observance of any of the by-laws relating thereto made under this Act, in addition to the fine which may be imposed on such person under this Act, may suspend, for any period not exceeding two months, any such licence.

Suspension
or revoca-
tion of
licence, etc.

And the Commissioners, upon the conviction of any person for a second or other subsequent like offence, may cancel his licence.

CHAPTER XII

PROCEDURE

Rules and by-laws

353. (1) The power of the [Provincial Government]¹ to make rules under this Act is subject to the condition of the rules being made after previous publication² and of their not taking effect until they have been published in the [Official Gazette]³.

Previous
publica-
tion of rules
made by
Government

(2) Any rule made by the [Provincial Government]¹ may be general for all municipalities or for all municipalities not expressly excepted from its operation or may be special for the whole or any part of any one or more than one municipality as the [Provincial Government]¹ directs.

354. (1) The power of the Commissioners to make rules under this Act shall be subject to the condition of such rules not taking effect until they have been confirmed by the [Provincial Government]¹.

Conforma-
tion and
publication
of rules and
by-laws

1. Substituted by the A. O. for "L. G."

2. As to the procedure for previous publication, see the B. and O. General Clauses Act, 1917 (B. & O. Act I of 1917), s. 26, printed ante, p. 271.

3. Substituted by the A. O. for "Gazette".

THE BIHAR AND ORISSA

(B. & O. Adt)

made by
the Commiss.
sioners.

(Secs. 355-358)

(2) The power of the Commissioners to make by-laws under this Act shall be subject to the condition of such by-laws being made after previous publication and of their not taking effect until they have been confirmed by the [Provincial Government]¹ and published in the [Official Gazette]².

(3) The [Provincial Government]¹ may, after previous publication of its intention, rescind any rule or by-law which it has confirmed, and thereupon the rule or by-law shall cease to have effect.

Power to
impose
penalties for
breach of
by-laws.

355. In making any by-law under this Act for the breach of which no penalty is otherwise herein provided the Commissioners may, with the sanction of the [Provincial Government]¹, direct that the breach thereof shall be punishable with a fine which may extend to fifty rupees, and, when the breach is a continuing one, with a further fine not exceeding five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

Publication
of by-laws,
orders and
notices.

Publication of By-laws, Orders and Notices

356. Every by-law, order, notice or other document directed to be published under this Act shall be written in, or translated into, the vernacular of the district, and deposited in the office of the Commissioners, and a copy shall be posted up in a conspicuous position at such office, and in such other public places as the Commissioners may direct;

and a public proclamation shall be made throughout such municipality by beat of drum, notifying that such copy has been so posted up, and that the original is open to inspection in the office of the Commissioners.

How notice,
etc., may be
served.

Service of Notices

357. Every notice, form, summons or notice of demand under this Act may be served personally on or presented to the person to whom the same is addressed;

or be left at his usual place of abode with some adult male member or servant of his family or be served by registered post;

or, if it cannot be so served, presented or delivered by him to put on some conspicuous part of his place of abode, or of the land, building or other thing in respect of which the notice, form, summons or notice of demand is intended to be served.

358. (1) When any notice is required to be given to the owner of any land, then if the owner and his place of abode are known to the Commissioners or other authorities issuing the notice, the notice shall be—

- (a) given in the manner mentioned in section 357 if such place of abode is within the limits of their authority; or
- (b) served by registered post if such place of abode is not within such limits.

1. Substituted by the A. O. for "J. G."

2. For notifications issued under this sub section, see the Orissa L. S. R. & O., Vol. I, Pt. VII.

3. Substituted by the A. O. for "Gazette".

(Sec. 359.561)

(2) If in any such case the owner's name or place of abode is not known, the notice may be given to the occupier of the land in the manner mentioned in section 37.

(3) When any notice is required to be given to the owner or occupier of any land, and the name of such owner or occupier is not known it shall be sufficient to designate him as "the owner" or "the occupier" of the land in respect of which the notice is given.

Enforcement of Requisition.

359. (1) Whenever it is provided in this Act that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, or the owners and occupiers of any land, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a notice to be served on every owner or occupier who is required to execute such work or to do such thing; but if there be any doubt as to the persons who are owners or occupiers, such requisition may be made by a notice to be posted up on or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers, of any land, to execute such work or to do such thing within a specified time; and in such notice it shall not be necessary to name the owners or occupiers.

Procedure,
when
owners or
occupiers
required to
execute
works by
Commiss.
ioners.

(2) Every requisition as aforesaid, other than a requisition under section 196 or 197, shall give notice to the persons to whom it is addressed that, if they fail to comply with the requisition or to prefer an objection against such requisition as provided in the next succeeding section, the Commissioners will enter upon the land and cause the required work to be executed, or the required thing to be done; and that in such case the expenses incurred thereby will be recovered from the persons who are required in such requisition to execute such work or do such thing.

360. A person who is required by a requisition as aforesaid, other than a requisition under section 196 or 197, to execute any work or to do anything may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or posting up of the notice containing the requisition or, if the time within which he is required to comply with the requisition be less than five days, then within such less time.

Objection
by persons
required to
execute any
work.

Except as provided in the next succeeding section such objection shall be heard and disposed of by the Chairman or Vice-Chairman.

361. If the objection alleges that the cost of executing the work or of doing the thing exceeds three hundred rupees, such objection shall be heard and disposed of by the Chairman or Vice-Chairman at a meeting; unless the cost will not exceed three hundred rupees, in which case the objection shall be heard and disposed of by the Chairman or Vice-Chairman:

Procedure
if person
objecting
alleges that
work will
cost more
than three
hundred
rupees.

(Sects. 362-365)

Provided that in any case in which the Chairman or Vice-Chairman has certified his opinion as aforesaid, and the objection has in consequence thereof been heard and disposed of by the Chairman or Vice-Chairman, the person making the objection may, if the requisition made upon him is not withdrawn on the hearing of his objection, pay in the said sum of three hundred rupees to the Commissioners as the cost of executing the work or doing the thing required, whereupon such person shall be relieved of all further liability and obligation in respect of executing the work or doing the thing required, and in respect of paying the expenses thereof; and the Commissioners themselves shall execute such work or do such thing, and shall exercise all powers necessary therefor.

Orders after
hearing
objection.

362. The Chairman or Vice-Chairman or the Commissioners at a meeting, as the case may be, shall, after hearing the objection and making any inquiry which may be deemed necessary, record an order withdrawing, modifying or making absolute the requisition against which the objection is preferred; and, if such order does not withdraw the requisition, it shall specify the time within which the requisition shall be carried out, which shall not be less than the shortest time which might have been mentioned under this Act in the original requisition.

Order to be
explained
orally

363. If the person making such objection is present at the office of the Commissioners, the said order shall be explained to him orally; and if such order cannot be so explained, notice of such order shall be served as provided in section 357 on the person making the objection; and such explanation of, or service of, the notice of the said order shall be deemed a requisition duly made under this Act to execute the work or do the thing required.

Power of
Commissi-
oners on
failure of
person to
execute
work.

364. If the person or persons required to execute the work or to do the thing fails or fail, within the time specified in any requisition as aforesaid, other than a requisition under section 196 or 197, to begin to execute such work or to do such thing, and thereafter diligently to continue the same to the satisfaction of the Commissioners until it is completed, the Commissioners or any person authorized by them in that behalf, may, after giving forty-eight hours' notice of their intention by a notice to be posted up on or near the spot, enter upon the land and perform all necessary acts for the execution of the work or doing of the thing required; and the expenses thereby incurred shall be paid by the owners or by the occupiers, if such requisition was addressed to the owners or to the occupiers respectively, and by the owners and the occupiers, if such requisition was addressed to the owners and the occupiers.

Apportion-
ment of
expenses
among
owners.

365. Whenever any expenses incurred by the Commissioners are to be paid by the owners or by the occupiers of any land as provided in the last preceding section, the Commissioners may, if there be more than one owner or more than one occupier, as the case may be, apportion the said expenses among such of the owners, or among such of the occupiers as are known, in such manner as to the Commissioners may seem fit.

(Sects. 366-370)

366. Whenever any expenses incurred by the Commissioners are to be paid by the owners and occupiers of any land, as provided in section 364, the Commissioners may apportion the said expenses among the said owners and occupiers, or such of them as are known, in such manner as to the Commissioners may seem fit.

Apportionment among owners and occupiers

367. Whenever any works or any alterations and improvements of which the Commissioners are authorized by this Act to require the execution are executed by the occupier on the requisition of the Commissioners, or are executed by the Commissioners and the cost thereof is recovered from the occupier, the cost thereof may, if the Commissioners certify that such cost ought to be borne by the owner, be deducted by such occupier from the next and following payments of his rent due or becoming due to such owner, or may be recovered by him in any court of competent jurisdiction.

Recovery by occupier of cost of works executed at his expense.

Recovery of Costs Expenses

368. All costs, expenses, rents, fees, or other moneys due under [redacted] may be recovered [redacted] 130].

Recovery of moneys due to the Commissioners.

369. (1) If money be due under this Act in respect of any holding from the owner thereof, on account of any tax, expenses or charges recoverable under this Act, and if the owner of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding, and after the expiry of not less than three months from the date of the last publication, unless the amount recoverable be paid, may sell such holding to the highest bidder, who shall, at the time of sale, deposit the full amount of the purchase-money.

Power to sell un-claimed holdings for money due.

(2) After deducting the amount due to the Commissioners as aforesaid, the surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of such Commissioners or in a court of competent jurisdiction.

(3) Any person may pay the amount due at any time before the completion of the sale, and may recover such amount by a suit in a court of competent jurisdiction from any person beneficially interested in such property.

370. (1) The materials of anything which shall have been pulled down or removed by the Commissioners under the provisions of section 359, sub-section (2) and section 194 may be sold by the Commissioners, and the proceeds of such sale may be applied, so far as the same will extend, to the payment of the expenses incurred.

Sale of materials of houses, etc. pulled down

1. Substituted by the B. and O. Municipal (Amendment) Act, 1932 (B. & O. Act II of 1932), s. 4 for "123 to 130".

(Sects. 371-374)

(2) The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

Power to enter upon possession of houses repaired.

371. If the Commissioners have under the provisions of this Act caused any repairs to be made to any house or other structure, and if such house or other structure be unoccupied, the Commissioners may enter upon possession of the same, and may retain possession thereof until the sum expended by them on the repairs be paid to them,

Power to retain possession of tank or pool till expenses of re-excavation etc., are realized.

372. If under section 223 read with sub-section (2) of section 359, the Commissioners execute the work of re-excavating or filling up a tank or pool, they may retain possession of the tank or pool or of the site thereof, and turn the same to profitable account until the expenses thereby incurred have been realized.

Appeals

Appeals from certain orders of the Commissioners

373. (1) Any person aggrieved by any prohibition, notice or order made by the Commissioners under the powers conferred upon them by sections 166 (1), 169, 170, 173 (6), 188 (1), 193, 196 (1), 197, 236, 252, 260 or 276 (2) may within thirty days from the date of such prohibition, notice or order, appeal to the Commissioners, and every such appeal shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting, and no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal.

(2) The appellate authority may, for sufficient cause, extend the period allowed by sub-section (1) of this section for appeal.

(3) The order of the appellate authority confirming, setting aside or modifying the prohibition, notice or order appealed from shall be final :

Provided that the prohibition, notice or order shall not be modified or set aside until the appellant and the Commissioners have had reasonable opportunity of being heard.

Prosecutions

Power of Commissioners to direct prosecution for public nuisance.

374. The Commissioners may direct any prosecution for any public nuisance, and may order proceedings to be taken for the recovery of any penalties under this Act, and for the punishment of any persons offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the municipal fund.

(Secs. 375-377)

375. No prosecution for an offence under this Act or any by-law made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted except within six months next after the commission of such offence unless the offence is continuous in its nature, in which case a prosecution may be instituted within six months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman of the municipality.

Provided that the failure to take out any licence under this Act shall be deemed to be a continuing offence until the expiration of the period for which such licence is required to be taken out.

376. (1) All police officers shall give immediate information to the Commissioners of the municipality of any offence committed against this Act or any by-law made in pursuance thereof.

(2) When any person, in the presence of a police officer, commits, or is accused of committing, any such offence, and refuses, on demand of a police officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless before the expiration of that time his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

Sanction and limitation for prosecutions under this Act.

Police officer to report offences and arrest persons refusing to give name and residence.

(3) Upon the recommendation of the Commissioners any servant of the Commissioners in receipt of a salary of not less than ten rupees per mensem, when empowered in that behalf by a general or special order of the District Magistrate, may exercise the powers of a police officer under this section.

Suits

377. (1) No suits shall be brought against the Commissioners of any municipality, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners, and also (if the suit is intended to be brought against any officer of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit is threatened to be brought, stating the cause of suit and the name and place of abode of the person who intends to bring the suit;

Notice of suits against Commissioners.

and unless such notice be proved, the court shall find for the defendant.

(2) Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

(Secs. 378-381)

(3) If the Commissioners or their officer, or any person to whom any such notice is given, shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

Contest of liability in civil courts.

378. Any owner or occupier of land may contest his liability to pay any expenses or fees under sections 361 to 366 or may contest the amount which he has been called upon to pay in a civil court of competent jurisdiction :

Provided that the fact of such action having been instituted shall be no bar to the recovery of the said amount, in the manner provided by section 368.

Compensation

Disputes as to compensation payable by the Commissioners.

379. Should a dispute arise touching the amount of compensation which the Commissioners are required by this Act to pay it shall be settled in such manner as the parties may agree, or in default of agreement, the amount and, if necessary, the apportionment of the same shall be ascertained and determined by a civil court of competent jurisdiction.

Savings.

380. (1) No assessment list or other list, notice, bill or other such document specifying, or purporting to specify, with reference to any tax, charge, rent or fee, any person, property, thing or circumstance shall be invalid by reason only of a mistake in the name, residence, place of business or occupation of the person or in the description of the property, thing or circumstance, or by reason of any mere clerical error or defect of form ; and it shall be sufficient that the person, property, thing or circumstance is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of a tax.

(2) No distress or sale made under this Act shall be deemed unlawful nor shall any party making the same be deemed a trespasser on account of any error, defect or want of form in the bill, notice, summons, warrant of distress, inventory or other proceeding relating thereto.

CHAPTER XIII

DELEGATION OF POWERS AND CONTROL

Delegation

Delegation of powers by the Provincial Government.

381. The [Provincial Government]¹ may, with regard to municipalities generally or to any municipality or class of municipalities in particular, and subject to such conditions or restrictions as it may deem fit to impose, by notification delegate to the Commissioner

1. Substituted by the A. O. for "L. G."

(Secs. 382-384)

of the Division or to any other authority any of the powers vested in the [Provincial Government]¹ by this Act, other than any power to make rules and other than the powers conferred by sections 4, 6, 11, 104 (second proviso), 113, 384, 385, 388 and 389.

Control

382. Any person authorized² by the [Provincial Government]¹ in this behalf may enter on and inspect, or cause to be entered on and inspected, any immovable property occupied by, or under the control and administration of, the Commissioners, or any work in progress under their direction; and may call for and inspect any document which may be, for the purposes of this Act, in the possession or under the control of the Commissioners.

Power of inspection.

383. (1) The District Magistrate may, by order in writing, suspend within the limits of the district the execution of any resolution or order of the Commissioners of any municipality, or prohibit the doing within those limits of any act which is about to be done, or is being done, in pursuance of, or under cover of, this Act, if, in his opinion, the execution of the resolution or order, or the doing of the act, is likely to lead to a serious breach of the peace, or to cause serious injury to the public, or to any class or body of persons.

Power to suspend action under Act.

(2) When the District Magistrate makes any order under this section, he shall forthwith forward, a copy thereof, with a statement of his reasons for making it, to the [Provincial Government]¹, which may thereupon rescind the order or direct that it continue in force with or without modification, permanently or for such period as it thinks fit.

(3) The [Provincial Government]¹ may set aside any resolution or order of the Commissioners of any municipality, if in its opinion the resolution or order is in excess of the powers conferred by law.

384. (1) If at any time it appears to the [Provincial Government]¹ that the Commissioners of any municipality have made default in performing any duty imposed on them by or under this or any other Act, the [Provincial Government]¹ may, by an order in writing, fix a time for the performance of that duty.

Powers of Provincial Government in case of default.

(2) If such duty is not performed within the period so fixed, the [Provincial Government]¹ may appoint the District Magistrate to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to the Magistrate from the municipal fund.

1. Substituted by the A. O. for "L. G".

2. For notifications authorizing certain officers to inspect municipalities, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII, and Orissa L. S. R. & O., Vol. I, Pt. VII.

(Sects. 385-386A)

(3) If the expense is not so paid, the District Magistrate, with the previous sanction of the [Provincial Government]¹ may make an order directing the person having the custody of the balance of the municipal fund to pay the expense, or so much thereof as is from time to time possible, from the balance, in priority to any or all other charges against the same.

Power to supersede Commissioners in case of incompetency, default or abuse of powers

385. If, in the opinion of the [Provincial Government]¹, the Commissioners of any municipality are not competent to perform, or persistently make default in the performance of, the duties imposed on them by or under this Act or otherwise by law, or exceed or abuse their powers, the [Provincial Government]¹ may, by an order published, with the reasons for making it, in the [Official Gazette]², declare such Commissioners to be incompetent or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order.

Consequence of supersession.

386 (1) When an order of supersession has been passed under the last preceding section, the following consequences shall ensue :—

- (a) all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners;
- (b) all the powers and duties which may, under the provisions of this Act, be exercised and performed by the Commissioners, whether at a meeting or otherwise, shall, during the period of supersession, be exercised and performed by such person or persons as the [Provincial Government]¹ may direct;
- (c) all property vested in such Commissioners shall, during the period of supersession, vest in the Government.

(2) On the expiration of the period of supersession specified in the order, unless the [Provincial Government]¹ otherwise directs, the municipality shall be re-established by election and appointment, and the persons who vacated their offices under clause (a) of subsection (1) shall not be deemed disqualified for election or appointment.

Power to appoint an officer for recovery of taxes.

[386 A. If—

- (a) in the opinion of the [Provincial Government]¹ the Commissioners of any municipality are not competent to exercise or perform, or persistently make default in the exercise or performance of, the powers or duties conferred or imposed on them by the provisions of Part III of Chapter IV in regard to the recovery of taxes, or

- (b) an application in this behalf is made by the Commissioners to the [Provincial Government]¹ in pursuance of

1. Substituted by the A. O for "L. G."

2. Substituted by *ibid* for "Gazette."

3. Inserted by the B. and O. Municipal (Amendment) Act, 1932 (B. & O. Act II of 1932), s. 5.

(Sec. 386-B)

a resolution passed by three-fourths of the Commissioners present at a meeting specially convened for the purpose,

the [Provincial Government]¹ may, by an order published, with the reasons for making it, in the [official Gazette]², appoint an officer to exercise and perform, for such period as may be specified in the said order, the powers and duties conferred and imposed on the Chairman or on the Commissioners by clauses (d), (e), (f) and (g) of sub-section (1) of section 107, sections 110 and 111, and by the provisions of Part III of Chapter IV, in regard to the recovery of any tax imposed under clauses (a), (b), (c), (d) or (e), or of a drainage tax imposed under clause (f), of sub-section (1) of section 82:

Provided that the [Provincial Government]¹ shall, before issuing any such order on any of the grounds specified in clause (a), give to the Commissioners not less than six months' warning of its intention to do so.]

[386-B. On the publication in the [official Gazette]² of an order under section 386-A and during the period of such order—

(a) neither the Commissioners nor the Chairman shall exercise or perform any of the powers or duties conferred or imposed on them by clauses (d), (e), (f) or (g) of sub-section (1) of section 107, sections 110 and 111 or by the provisions of Part III of Chapter IV, in regard to the recovery of any tax imposed under clauses (a), (b), (c), (d) or (e), or of a drainage tax imposed under clause (f), of sub-section (1) of section 82 and all the said powers and duties shall be exercised and performed by the officer appointed under section 386-A;

Consequen-
ces
of appoint-
ment of an
officer under
section
386-A.

(b) for the purposes of any amendment or alteration of an assessment list under clause (d) of sub-section (1) of section 107, by the officer appointed under section 386-A, sub-section (2) of the said section 107 shall be read as if for the word "Commissioners" the words, figures and letter "the officer appointed under section 386-A" were substituted, and as if for the words, brackets and letters "they propose to make under clauses (a), (b), (c) or (d)", the words, brackets and letter "he proposes to make under clause (d)" were substituted; and as if for the word "the officer appointed under section 386-A" of the said section 107 shall be read under sub-section (1), the clauses (d), (e), (f) or (g) as if for the words "the

Chairman" the words, figures and
section 386-A" were substituted;

1. Substituted by the A. O. for "L. G."

2. Substituted by *ibid* for "Gazette".

3. See foot-note 3 on p. 512, ante.

(Secs. 386C-387)

(c) for the purposes of any application for review of any amendment or alteration of an assessment list made under section 107 by the officer appointed under section 386-A, sub-section (1) of section 117 shall be read as if for the words "not less than three Commissioners" the words "one person appointed by the Commissioners and two persons, of whom not more than one shall be a salaried servant of Government, appointed by the District Magistrate," were substituted ; and

(d) any arrear of any tax mentioned in clause (a) of this section due from any person together with, in the case of any arrear the whole or any part of which has not been realized after distress and sale, costs according to the prescribed scale of fees, shall be recoverable as a public demand payable to the officer appointed under section 386-A.]

Appoint-
ment of
staff and
payment of
cost thereof.

¹[386-C. (1) The officer appointed under section 386 A may appoint such staff as he considers necessary to assist him in the exercise and performance of the powers and duties conferred and imposed on him by section 386-B.

(2) The [Provincial Government]² may direct that the Commissioners shall pay in each year in respect of the total cost of the recovery of taxes by the officer appointed under section 386-A, including the salaries and allowances of such officer and the staff appointed by him such sum, not exceeding ten *per centum* of the total assessment for the year, and the said sum shall be a charge on the municipal fund.]

Disputes.

387. (1) If any dispute, for the decision of which this Act does not otherwise provide, arises between the Commissioners of two or more municipalities constituted under this Act, or between the Commissioners of any such municipality and a district board or, cantonment authority, the matter shall be referred to the [Provincial Government].

(2) The decision of the [Provincial Government]² to which any dispute is referred under this section shall be final :

³[Provided that, where one of the parties to the dispute is a cantonment authority, the decision of the Provincial Government shall be subject to the concurrence of the Central Government.]

1. See foot-note 3 on p. 512, *ante*.

2. Substituted by the A. O. for "L. G".

3. Inserted by *sicid*.

(Sects. 388-391)

CHAPTER XIV

NOTIFIED AREAS

388. (1) The [Provincial Government]¹ may by notification declare² that it is necessary to make administrative provision for all or any of the purposes of this Act in any area specified in the notification, other than a municipality or a cantonment.

(2) An area in respect of which such a notification has issued is hereinafter called a notified area.

389. The [Provincial Government]¹ may by notification³

Constitution
of notified
area.

(a) apply or adapt to a notified area or to any part of a notified area any provision of this Act which may be applied to a municipality, or any rule or by-law in force or which can be made in any municipality under this or any other Act;

Power to
impose
taxation in,
apply
enactments
to, and
constitute
committees
in, notified
area.

(b) impose in a notified area or in any part of a notified area any tax which could be imposed by the Commissioners if the notified area were a municipality; and

(c) appoint or make rules for the appointment or election of a committee to carry out the purposes of this Act in the notified area.

390. When any enactment, rule or by-law is applied or adapted to, or any tax imposed in, a notified area under this Chapter, then unless a different intention appears, such enactment, rule or by-law shall apply, and the proceeds of such tax may be expended in such manner, as if the notified area were a municipality and the committee were the Commissioners.

Construction
of enact-
ments and
expenditure
of proceeds
of taxes im-
posed in
notified area.

CHAPTER XV

SUPPLEMENTARY AND TRANSITIONAL PROVISIONS

391. All municipalities constituted, Commissioners, Chairmen and Vice-Chairmen appointed or elected, committees established, limits defined, appointments, rules, orders and by-laws made, licences granted, notifications and notices issued, taxes and rates imposed

Continuity
of municipa-
lities,
officers,

1. Substituted by the A. O. for "L. G."

2. See Orissa L. S. R. & O., Vol. I, Pt. VII.

3. See ibid.

(Sects. 392-395)

appointments, rules, etc., not affected by Act.

Passing of property, rights and liabilities to Commissioners of municipalities constituted under Act.

Recovery of sums due at commencement of Act.

Vacation of office by existing Commissioners, Vice-Chairman and Chairman.

Provision for exercise of extraordinary powers.

and proceedings taken under any of the enactments repealed by section 2 shall, so far as may be, be deemed to have been respectively constituted, appointed, elected, established, defined, made, granted, issued, imposed and taken under this Act.

392. All property, all rights of whatever kind used, enjoyed or possessed by, and all interests of whatever kind owned by, or vested in, or held in trust by or for, the Commissioners of a municipality constituted under the Bengal Municipal Act, 1884, as well as all liabilities legally subsisting against the said Commissioners shall pass to the Commissioners of the municipality as constituted under this Act.

393. All rates, taxes, payments by way of composition for a rato or tax, and all sums of money otherwise due to the Commissioners at the commencement of this Act may be recovered as though they had accrued under this Act.

394. Notwithstanding anything contained in Chapter II, the terms of office of the Commissioners of a municipality shall expire on such date as the [Provincial Government]¹ shall determine, and the [Provincial Government]¹ may make such regulations as may be necessary for the purpose of constituting a register of voters to be prepared and arrangements for election. Newly elected and appointed Commissioners may come into office on the date fixed for the retirement of the former Commissioners;

Provided that the Chairman and Vice-Chairman elected or appointed under the Bengal Municipal Act, 1884, shall continue in office until a new Chairman has been elected or appointed under this Act, and shall then vacate office.

395. At any time within one year after the commencement of this Act the [Provincial Government]¹ or the Commissioners at a meeting with the previous sanction of the [Provincial Government]¹, may take such action, consistent so far as may be with the provisions of this Act, as may in the opinion of the [Provincial Government]¹, be necessary for the purpose of newly constituting any body of Commissioners or bringing the provisions of this Act into force for the first time.

1. Substituted by the A. O. for "L. G."

B. &
III of IIB. &
III of IIB. &
III of II

(Schedule I)

THE FIRST SCHEDULE

[See Sections 82 (1) (f) and 137]

TAX ON VEHICLES, HORSES AND OTHER ANIMALS

Per quarter.
Rs. as.

* * * * *

For every four-wheeled vehicle drawn by two horses ...	5	0
For every four-wheeled vehicle other than those specified above.	2	8
For every two-wheeled vehicle including a <i>shampani</i> , but excluding a bicycle.	2	0
[For every bicycle	1	0]
For every <i>jinrickshaw</i>	1	0
For every horse other than a pony	2	0
For every pony, mule or donkey	1	0
For every elephant	6	0
For every camel	2	0

1. Omitted by the B. and O. Motor Vehicles Taxation Act, 1930 (B. & O. Act II of 1930), s. 3 and First Sch. The original entry read as follows :—

Per quarter.
Rs. as.

For every motor car of not less than twenty-five horse power used for the conveyance of human beings ..	10	0
For every motor car of less than twenty-five but not less than twelve horse power used for the conveyance of human being	6	0
For every motor car of less than twelve horse power used for the conveyance of human beings	4	0
For every motor lorry	15	0
For every motor tricycle	3	0
For every motor bicycle	2	0
For every side car	1	0

2. Inserted by the B. and O. Municipal (Orissa Amendment) Act, 1943 (Orissa Act XII of 1943), s. 2

(Schedules II-III)

THE SECOND SCHEDULE

[See Section 2(1)]

ENACTMENTS REPEALED

Year	No	Short title	Repeal
1865	VII	The Bengal Municipal (Slaughter-houses and Meat-markets) Act	The whole
1884	III	The Bengal Municipal Act	The whole
1885	I	The Bengal Ferries Act	Section 4
1886	III	The Bengal Municipal (Amendment) Act	The whole
1891	II	The Calcutta Hackney-Carriage Act	The whole
1894	IV	The Bengal Municipal (Amendment) Act	The whole
1896	II	The Bengal Municipal (Amendment) Act	The whole
1910	II	The Bengal Municipal (Amendment and Validation) Act	The whole
1920	III	The Bihar and Orissa Municipal (Sanitary Officers) Act	The whole

THE THIRD SCHEDULE

[See Section 2 (2)]

ENACTMENTS AMENDED

Year	No	Short title	Amendments
1885	I	The Bengal Ferries Act	In section 35— (1) for the words "shall be managed by such District Board" substitute the words "or situated, within or adjacent to the limits of any Municipality, shall be managed by such District Board or by the Commissioners of such Municipality as the case may be"; and (2) for the words "District Fund" substitute the words "District or Municipal Fund as the case may be".

BHAR AND ORISSA ACT VI OF 1923

(THE BIHAR AND ORISSA STATE AID TO INDUSTRIES ACT 1923)

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SECTIONS

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BIHAR AND ORISSA ACT VI OF 1923

[THE BIHAR AND ORISSA STATE AID TO INDUSTRIES ACT, 1923]¹

(31st October, 1923)

An Act to regulate the giving of State aid to Industries

Whereas it is expedient to regulate the giving of State aid to industries; Preamble.

And whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Bihar and Orissa State Aid to Industries Act, 1923. Short title,
extent and
commencement.

(2) It shall extend to the whole of Bihar and Orissa including the Santal Parganas.

(3) It shall come into force² on such date as the [Provincial Government]³ may by notification direct.

2. In this Act, unless there be something repugnant in the Definitions subject or context,—

(1) the "Board" means the Board of Industries constituted under section 3;

"[(1A) "cottage industry" means any industry that is carried on in a place which is not a factory for the purposes of the Factories Act, 1934 ;]

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the B. & O. Gazette, 1923, Pt. V, p. 64, for Report of the Select Committee, see, ibid, p. 76; and for Proceedings in Council, see Bihar and Orissa Legislative Council Debates, 1923, Vol. VIII, pp. 37 and 173

LOCAL EXTENT.—See s. I (2). This Act has been extended to the areas ... the Province of Madras and the Central Provinces, 1930), s. 11 and Fourth Sch. and see State Aid to Industries Regulation,

gul Laws Regulation, 1936 (Reg. V
Khondmals Laws Regulation, 1936

OTHER ENACTMENTS.—For loans to Agriculturists for land improvement see the Land Improvement Loans Act, 1883 (XIX of 1883), and the Agriculturists' Loans Act, 1884 (XII of 1884), in Central Acts, Vol. III, pp. 174 and 220 respectively.

2. This Act came into force on the 15th March 1924, see Notification No 933-D, dated the 17th March 1924, in the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

3. Substituted by the A. O. for "L. G."

4. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 2. (a).

(Sec. 3)

(2) "Director" means the Director of Industries, and includes any officer appointed by the [Provincial Government]¹, either by name or by virtue of his office, to perform any of the functions of the Director under this Act;

(3) "industry" means any industrial business or enterprise, including agriculture, conducted or undertaken either by an individual or by a company, association or body of individuals whether incorporated or not;

(4) "machinery" includes plant, apparatus, tools and other appliances required for the purpose of carrying on any industrial operation or process ; and

(5) "prescribed" means prescribed by rules made under this Act.

²[(6) "village industry" means any industry which forms the normal occupation, whether whole-time or part-time, of any class of the rural population of the Province]

CHAPTER II

GENERAL PROVISIONS REGARDING THE GIVING OF STATE AID

Constitution
of
Board of
Industries.

3. (1) There shall be constituted a Board of Industries³ consisting of such number of members, not less than twelve, as the [Provincial Government]¹ may by notification⁴ determine : provided that not less than two-thirds of the total number shall be non-officials.

(2) Three of the members shall be elected by the members of the [Bihar Legislative Assembly]⁵ from among their own number, and such number as the [Provincial Government]¹ may from time to time by notification determine shall be elected by such associations or other bodies as the [Provincial Government]¹ may select as best representing any particular classes of industries or interests. The elections shall be made in such manner as may be determined, subject to the approval of the [Provincial Government]¹, by the electing bodies.

(3) The Director of Industries shall be a member *ex-officio*.

1. Substituted by the A. O. for "L. G."

2. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 2 (b).

3. For notification constituting a Board of Industries under this section, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

4. For notification under this section, see the Orissa L. S. R. & O., Vol. I, Pt. VII.

The
nee to

(Sec. 4)

¹[(4) The remaining members shall be appointed by the Provincial Government :

Provided that the Board shall have power to co-opt, for the discussion of any particular question before it, experts specially qualified to advise on the matter in question or having special knowledge of local conditions in any area where the industry in question is situated :

Provided further that any member so co-opted shall have no right to vote.]

(5) The Chairman of the Board shall be appointed² by the [Provincial Government]³ from among the members of the Board.

(6) The names of the members who have been elected and appointed shall be published in the [Official Gazette]⁴.

4. The forms of State aid which may be given are the following, Forms of
State aid. namely :—

(a) the grant of a loan ;

(b) the guarantee of a cash credit, overdraft or fixed advance with a bank ;

(c) the taking of shares or debentures ;

(d) the guarantee of a minimum return on the whole or part of the capital of a joint-stock company ;

(e) the grant on favourable terms of land, raw material, firewood, water or any other [property vested in His Majesty for the purposes of the province]⁵.

⁶[(f) the payment of subsidy—

(i) in the case of cottage industry, for any purpose connected with the establishment or running or expansion and development of such industry ; and

(ii) in the case of any other industry, for the conduct of research or the purchase of machinery ;]

(g) the supply of machinery on the hire-purchase system ;

⁷[(h) the supply of electric energy at concessional rates from

1. Substituted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1917 (Orissa Act XXII of 1917), s. 3, for the original cl. (4) which read as follows:—" (4) The remaining members shall be appointed by the Local Government".

2. For appointment of the Chairman of the board, see the Orissa L. S. G. & O. Vol. I, Pt. VII.

3. Substituted by the A. O for "L. G."

4. Substituted by *ibid* for "Gazette".

5. Substituted by *ibid* for "property of the Local Government".

6. Substituted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1917 (Orissa Act XXII of 1917), s. 4 (a), for the original cl. (5).

(i) the conduct of research, or
(ii) the purchase of machinery".

7. Inserted by *ibid*, s. 4 (b).

(Secs. 5-6)

a source which is the property of the Crown for the purposes of the Province.]

Industries to which several forms of State aid may be given.

5. State aid may be given—

(a) in any of the forms specified in section 4, to—

(i) a new or nascent industry,

(ii) an industry to be newly established in an area where such industries are undeveloped ; *¹

(iii) a cottage industry ; [or]²

²[(iv) old or established industries :

Provided that State aid shall not be given to any old or established industry unless the Provincial Government are satisfied that special reasons exist for giving such aid ;]

(b) in the form specified in clause (g) of the said section, to agriculture ; and

(c) in the forms specified in clauses (b) and (f) (i) of the said section, to any industry except agriculture :

Provided that no State aid shall be given to any joint-stock company unless the company—

(a) is registered in India with a rupee capital, and

(b) conforms to such rules as may be made under this Act requiring that a minimum proportion of the members of its Board of Directors shall be Indians ;

Provided further that every recipient of State aid shall make such provision for the training of apprentices as the [Provincial Government]³ may prescribe.

Delegation of power to give State aid.

⁴[6. (1) The Provincial Government may empower any authority subordinate to the Provincial Government to grant State aid for the purpose of any specified under clauses conditions and with su]

Thereupon such authority shall grant State aid in accordance with such rules as may be prescribed up to an amount or value not exceeding five hundred rupees in each case.

(2) The Provincial Government may empower any authority subordinate to the Provincial Government to grant State aid for the purpose of any industry other than a cottage industry in one or more of the forms specified under clauses (a), (b) and (g) of section 4 on such terms and conditions and with such limitations or

1. The word "or" omitted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 5 (1).

2. Inserted by *ibid.*, s. 5 (2).

3. Inserted by *ibid.*, s. 5 (3).

4. Substituted by the A. O for "L. G."

5. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 6. The original s. 6 was omitted by the A. O

(Sect. 7-2)

restrictions as they stand at. Thereupon such authority shall grant State aid in accordance with such rules as may be prescribed as to an amount or value not exceeding five thousand rupees in each case:

Provided that in cases mentioned in subsections 1 and 2 it shall not be necessary for such authority to refer the application for State aid to the Board under section 7;

7. (1) Applications for State aid shall be made to the Director in such form, and shall contain such information as may be required, Government
of India
and

(2) Every application [except such as are referred to in subsection 1] shall be placed before the Board at a meeting for its advice, and no application shall be allowed if two-thirds of the members of the Board present at the meeting advise its rejection:

* [Provided that where the application is for State aid of an amount not exceeding Rs. 1,000, the Director may, if he thinks fit, instead of placing the application before a meeting of the Board, consult the members of the Board in such manner as may be prescribed, and in such a case, the application shall be disallowed if two-thirds of all the members of the Board advise its rejection];

(3) No State aid shall be given of an amount or value exceeding such sum as may be prescribed or, if the [Provincial Government]¹ * * *, so directs, of an amount or value less than such sum, unless the application therefor has been published in the prescribed manner together with a notice calling upon persons objecting to the giving of such aid to submit their objections in such manner as may be prescribed.

(4) The [Provincial Government]² * * * * shall consider every such objection, and, after making such inquiry, if any, as it may deem necessary, shall make an order either admitting or disallowing it.

8. No member of the Board shall vote or take part in the discussion of any question coming up for consideration at a meeting of the Board if the question is one in which he or his partner has any direct or indirect pecuniary interest, or in which he is interested professionally on behalf of a client or as agent for any person other than the [Provincial Government]³ a local authority or a railway company.

Member of
the Board
not to take
part in pro-
ceedings in
which he is
pecuniarily
or profes-
sionally
interested

1. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 7.

2. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1943 (Orissa Act V of 1943), s. 2.

3. Substituted by the A. O. for "I. O."

4. The words "or the authority to which it has delegated the power to give State aid, as the case may be" omitted by the A. O.

5. The words "or the said authority, as the case may be" omitted by ibid.

6. Substituted by ibid for "Government".

(Sects. 8A-9)

Power of Board to make regulations.

¹[8.A. (1) The Board may make regulations in regard to the following matters, namely :—

- (i) the time and place of its meetings ;
- (ii) the manner in which notice of meetings shall be given ;
- (iii) the conduct of proceedings at meetings ;
- (iv) the division of duties among the members of the Board ;
- (v) the appointment, duties and procedure of special committees consisting wholly of members of the Board or partly of such members and partly of other persons ;
and
- (vi) generally, the carrying out of the purposes of this Act.

(2) Any regulation made under sub-section (1) which is repugnant to the provisions of any rule made under section 32 shall, to the extent of such repugnancy, but not otherwise, be void.]

Supersession of Board

²[8.B (1) If at any time it appears to the Provincial Government that the Board is not properly performing the duties imposed upon it by or under this Act, the Provincial Government may, after giving notice to the Board, by an order remove all appointed members and that the vacancies shall thereupon be filled by election in respect of elected members and by appointment in respect of appointed members or that all the vacancies shall be filled by appointment.

(2) From the date of an order under sub-section (1) until the vacancies are filled, all powers and duties of the Board shall be exercised and performed by such person, in such manner, as the Provincial Government may direct]

CHAPTER III

PROVISIONS REGULATING THE GIVING OF STATE AID OTHERWISE THAN BY THE SUPPLY OF MACHINERY ON THE HIRE-PURCHASE SYSTEM

Limitation of amount of loans

9. (1) No loan shall be granted to any industry of an amount exceeding such percentage as may be prescribed of the net value of the assets of the industry after the deduction of the value of all encumbrances existing at the time when the application is made.

1. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 8.

2. Inserted by *ibid*, s. 9.

(Secs. 10-13)

(2) The valuation of the assets under sub-section (1) shall be made by the Director in the prescribed manner. For the purpose of such valuation the additional assets which may be created by the grant of such State aid may be taken into account to such extent as may be prescribed.

10. Every loan granted to an industry shall be secured by a mortgage or floating charge upon the whole of the assets of such industry, subject to any encumbrances existing at the time when the loan is granted, and by such collateral security, if any, as the [Provincial Government]¹ may require.

11. In any case in which an application for a loan has been made under this Chapter, the applicant, and at any time during the currency of a loan that has been granted, the grantee, shall be bound—

- (a) to comply with any general or special order of the [Provincial Government]¹ relative to the inspection of the premises, buildings, machinery and stock-in-hand of the industry;
- (b) to permit the inspection of all accounts relative to the industry;
- (c) to furnish full returns of all products manufactured or sold both as regards description and quantity;
- (d) to maintain such special accounts and to furnish such statements as the [Provincial Government]¹ may from time to time require; and
- (e) to submit the accounts of the industry to such audit as the [Provincial Government]¹ may prescribe.

12. If at any time the outstanding balance of the loan is found to exceed the percentage fixed under section 9, the [Provincial Government]¹ may either recover so much of such balance as is in excess of such percentage, or accept such additional or collateral security as it may deem sufficient.

13. If the grantee fails to comply with any order under clause (a) of section 11, or does not permit or obstructs the inspection of the accounts of the industry, or makes default in respect of any of the particulars specified in clauses (c), (d) and (e) of the said section, or if [Provincial Government]¹ is of opinion that State aid should be withdrawn, or if the grantee disposes of any profits in contravention of

Power of
Provincial
Government
to adjust
security
during
currency of
loan

Power of
Provincial
Government
to recover
loan

¹. Substituted by the A. O. for "L. G."

(Secs. 14-17)

the provisions of section 18, the [Provincial Government]¹ may, after considering any representation the grantee may make within such time as the [Provincial Government]¹ may allow in this behalf, proceed to recover the loan.

Repayment of loans.

14. (1) Every loan granted under this Chapter shall be made repayable by instalments within such period from the date of the actual advance of the loan or, when the loan is advanced in instalments, from the date of payment of the last instalment, and shall bear interest at such rate and payable in such manner as may be fixed by the order granting the loan.

(2) The period fixed as aforesaid shall not exceed twenty years unless the [Provincial Government]¹, by general or special order, extends the same.

Guaranteeing of cash credits, etc., with banks.

15. The provisions of sections 9 to 13 (both inclusive) in respect of loans shall, subject to any rules that may be made under this Act, apply so far as may be to guarantees of cash credits, overdrafts or fixed advances with banks.

**Exemption
of
certain
industries
from the
operations
of sections
9, 10 and 12.
Subscription
for shares or
debentures
or guarantees
of a mini-
mum return
on capital.**

[15 A. Save as may otherwise be prescribed, nothing in sections 9, 10 and 12 shall apply to any industry with a capital outlay not exceeding two thousand rupees or to any cottage industry for which the State aid granted does not exceed three thousand rupees in value.]

16. The conditions of the taking of shares or debentures by the [Provincial Government]¹, or the guarantee of a minimum return of the whole or part of the capital of any industry, shall be—

(a) that the industry shall be subject to the conditions of section 11 in respect of inspection and returns ; and

(b) that for all shares and debentures taken by the [Provincial Government]¹ there shall be taken by other persons shares or debentures on which an amount has been paid not less than that paid by the [Provincial Government]¹.

Subsidies.

I. Substituted by the A. O. for "L. G."

². Inserted by the B. & O. State Aid to Industries (Orissa Amendment) Act 1947 (Orissa Act XXII of 1947), s. 10.

³ Substituted by *ibid.* s. 11, for the original s. 17.

(Secs. 18-19A)

- (a) that an amount equal to the sum paid or to the money value of the grant or concession as fixed at the time when it was made shall be repaid to the Provincial Government at the close of such term of years as may be fixed by the Provincial Government in this behalf, if- within that term the Industry be shown to the satisfaction of the Provincial Government to be paying interest or dividend upon the capital invested in such an industry in excess of such rate as the Provincial Government may determine ;
- (b) that such State aid shall be discontinued if the industry be shown to the satisfaction of the Provincial Government, to be earning profit in excess of such rate as the Provincial Government may prescribe.

(2) No subsidy to an industry other than a cottage industry shall exceed forty per cent of the cost of research or of the cost of the machinery, as the case may be.]

18. No recipient of State aid shall pay any dividend, or distribute or take any profits, in excess of such percentage rate upon the amount of the capital of the industry as the [Provincial Government]¹ may from time to time fix, until the conditions on which the State aid has been granted are fulfilled. The balance of the profits, after proper amounts have been set aside for obsolescence or depreciation of machinery and buildings and for the payment of interest on debentures of loans, shall be carried to a reserve fund to be utilized in such manner as the [Provincial Government]¹ may approve.

Disposal of profits when conditions on which State aid is given are not fulfilled.

19. Notwithstanding anything elsewhere contained in this Chapter, if in any case the amount or value of the State aid given thereunder amounts to or exceeds two lakhs of rupees, the [Provin-
other case may, by the appoint-
therwise, take power to ensure
industry as shall suffice in its

Government control of industry aided.

[19-A. If the Provincial Gove-
explanation, if any, offered by the owner
reasons to be recorded in writing to
of an industry on any of the following grounds, namely :—
(i) that any portion of the State aid given has been misapplied,
(ii) that there has been a breach by the owner of the industry of the provisions of this Act or of any rule made thereunder or of any condition of the grant,

Power of Provincial Government to terminate State aid on account of default.

1. Substituted by the A. O. for "Government."

2. Substituted by ibid, for "L. Q."

3. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1917 (Orissa Act XXII of 1917), s. 12.

(Sec. 20)

- (iii) that the application on which the State aid has been granted contained, or was accompanied by, any material statement by the owner which he knew to be false, or any intentional concealment by him of any material fact, which in the opinion of the Provincial Government it was his duty to disclose, or that any such false statement or concealment was intentionally made in any enquiry made under this Act by or with the connivance of the owner or in any return under this Act, or in reply to any requisition for information under this Act, or
- (iv) that the industry is being managed in such a manner as to endanger the repayment of the value of State aid granted thereto repayable under this Act,

the Provincial Government may make an order that the State aid be terminated and, notwithstanding anything contained elsewhere in this Act or in any other enactment, may proceed to recover from the owner as an arrear of land revenue—

- (a) the whole amount of any loan outstanding, together with such interest as may be due thereon, or
- (b) in cases where the aid is given otherwise than by loan, the money value of the grant or concession as fixed at the time when it was made, together with interest at a rate not exceeding twelve and a half per cent from the date of the grant or concession till the date of realisation, and
- (c) in the cases mentioned in clause (a) or clause (b) the cost of recovery, and, if the Provincial Government so direct, the cost of any enquiry made in connection therewith,

and such order shall be final and shall not be called into question in any Court.]

Recovery of
moneys due
under this
Chapter.

20. (1) All moneys recoverable under this Chapter, including any interest chargeable thereon and costs, if any, incurred, if not paid when they are due may be recovered by the Director from the person aided and his surety, if any, as if they were [arrears of land revenue]¹.

(2) When any sum due as aforesaid is paid to the Director by the surety or is recovered from him or out of his property by the Director, the Director shall, on the application of the surety, so far as possible recover the sum from the person aided and pay it to the surety.

¹. Substituted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 13 for "public demand".

(Secs. 20A-23)

[20A. The Provincial Government may charge in respect of applications, enquiries, inspections and audit by whomsoever made under the provisions of this Act, such fees, if any, as may be prescribed.]

CHAPTER IV

SUPPLY OF MACHINERY ON THE HIRE-PURCHASE SYSTEM

21. No machinery shall be supplied on the hire-purchase system unless the applicant therefor deposits with the Director such percentage of the cost thereof as may be prescribed.

Percentage
of cost to
be deposited
by hirer.

22. When an application is allowed, the Director shall, subject to and in accordance with any rules that may be made under this Act, make an order specifying the following particulars, namely :—

Particulars
to be speci-
fied in order
when appli-
cation is
allowed.

- (a) the amount of each instalment of rent to be paid for the hire of the machinery and the number of such instalments to be paid before the machinery shall become the property of the hirer ;
- (b) the amount of interest, if any, to be paid with each instalment of rent on the remaining unpaid instalments ;
- (c) the dates on which and the manner in which the aforesaid payments shall be made ; and
- (d) such other particulars as may be prescribed.

23. Until the hiring is terminated in the manner hereinafter provided, the following provisions shall apply, namely :—

Conditions
of supply of
machinery
on hire-pur-
chase
system.

- (a) The hirer shall pay punctually without demand the instalments of rent and amount of interest specified in the order referred to in section 22.
- (b) The hirer shall retain the machinery in his own possession in good and serviceable order and condition, and shall not without the previous written consent of the Director make any addition thereto or alteration therein, nor remove the machinery from the premises specified in the application for the supply thereof.
- (c) The machinery shall remain the sole and absolute property of [the Crown for the purposes of the Province]¹, and any transfer thereof, or assignment of any right, title or interest therein, or the creation of any mortgage, encumbrance or any other charge thereon, by the hirer shall be void as against [the Crown]² unless it has been

1. Inserted by the B. & O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 14.

2. Substituted by the A. O. for "Government".

3. Substituted by *ibid* for "Government".

(Sects. 24-26)

made with the previous written consent of the Director.

(d) The machinery shall not be liable to restraint, attachment or sale by any process under any law for the time being in force.

(e) The machinery shall bear a metal plate in the prescribed form and any person who wilfully removes or defaces such plate shall be liable to a fine not exceeding five hundred rupees. It shall be presumed until the contrary is proved that machinery bearing such metal plate is the property of [the Crown] hired out under this Chapter.

(f) The hirer shall permit the Director, or any person authorized by the Director in this behalf, to inspect the machinery at all reasonable times, and the Director or such other person shall have all such powers of entry as may be necessary for the purpose of making an inspection.

(g) In addition to the foregoing conditions the hirer shall be bound by such other conditions consistent therewith as may be prescribed by rules made under this Act, or may be imposed by the Director in any particular case.

Consequences of default by hirer.

24. If the hirer makes default in paying the rent of the machinery, or any sum payable as interest or any other charges due from him under this Chapter, or fails to comply with any of the conditions contained in, or that may be imposed under, section 23, the Director may immediately terminate the hiring and he or any other officer authorized by him in this behalf may thereupon enter the premises in which the machinery is for the time being kept, whether such premises belong to the hirer or not, and seize and take away the same.

Option of hirer to purchase machinery seized for default.

25. If the machinery is seized and taken away under section 24, the hirer shall have the option to be exercised within one month after such seizure, or such longer period as may be allowed by the Director in this behalf, of purchasing the same by payment to the Director of the unpaid balance of the cost thereof, such proportion of the interest on such cost as may be prescribed, and the cost of and expenses incidental to such seizure and removal.

Termination of hiring by hirer.

26. The hirer may at any time terminate the hiring by returning the machinery to [the Provincial Government]¹ in the prescribed manner.

1. Substituted by the A. O. for "Government"

2. Substituted by *ibid* for "Government".

(Secs. 27-31)

27. If the Director terminates the hiring under section 24 and the hirer does not purchase the machinery under section 25, or if the hirer returns the machinery to [the Provincial Government]¹ under section 26, the hirer shall not be entitled to the refund of the sum deposited by him under section 21, or to the refund or remission of any payment made by him under section 22, and he shall be liable to pay such amount as may be required to repair any tear, that may have been caused to the machinery during the hiring.

28. When, after credit has been given for the amount deposited under section 21, the hirer has paid in full all the instalments of rent mentioned in clause (a) of section 22, and the amount of interest, costs, and other charges payable by him under this Chapter, he shall become the owner of the machinery and shall thereupon remove from the same the metal plate mentioned in clause (e) of section 23 :

Provided that if at any time during the hiring the hirer pays in advance the remaining instalments of rent the interest payable in respect thereof shall be remitted.

29. If the hirer wilfully omits, after receiving due notice, to remove the metal plate from any machinery which has become his property under section 28, he shall be liable to a fine not exceeding fifty rupees.

30. All sums payable under this Chapter shall be recoverable as if they were public demands².

Liability of hirer on termination of hiring under sections 24 and 26.

Termination of hiring on payment of cost of machinery.

Penalty for omission to remove metal plate when machinery becomes property of hirer.

Recovery of sums due under this Chapter.

CHAPTER V

SUPPLEMENTAL

31. (1) The decision of the [Provincial Government]³ as to whether the conditions laid down in or under any of the provisions of this Act have been satisfied shall be final, and no suit shall be brought in any civil court to set aside or modify any order made thereunder.

(2) No prosecution, suit or other proceeding shall lie against any [servant of the Crown]⁴ or other authority vested with powers under this Act for anything in good faith done or intended to be done thereunder.

Finality of decision of Provincial Government and bar of suits and proceedings in Civil and Criminal Courts.

1. Substituted by the A. O. for "Government".

2. For recovery of public demands, see the B. and O. Public Demands Recovery Act, 1914 (B. & O. Act IV of 1914), printed ante p. 163.

3. Substituted by the A. O. for "L. G."

4. Substituted by ibid for "Government Officer".

(Sec. 32)

32. (1) The [Provincial Government]¹ may after previous publication² make rules³ consistent with this Act for the carrying out of all or any of its purposes.

(2) In particular and without prejudice to the generality of the foregoing power, the [Provincial Government]¹ may make rules regulating or determining all or any of the following matters, namely :—

(a) the conduct of proceedings of the Board including the manner in which notice of a meeting shall be given, the fixing of a quorum and the due record of proceedings ;

⁴[(aa) the manner of consulting the members of the Board in cases referred to in the proviso to sub-section (2) of section 7 ;]

(b) the particular classes of industries to which and the purposes for which State aid may be given under section 5 ;

⁵[(c) the delegation of power to give State aid and the manner of making grant under section 6 ;]

(d) the manner of making applications for State aid under sub-section (1) of section 7 and all matters relative to the publication of such applications, and the submission and disposal of objections under sub-sections (3) and (4) of the said section ;

(e) the manner of ascertaining the net value of the assets of an industry and the percentage of such value which may be granted as a loan under section 9 ;

(f) the nature of the security to be taken and the conditions under which State aid may be given under section 10 ;

(g) the inspection under section 11 of the premises, buildings, machinery and stock-in-hand and the mode of keeping and auditing the accounts and of furnishing returns of any industry in respect of which State aid has been given ;

(h) the guaranteeing by the [Provincial Government]¹ of cash credits, overdrafts or fixed advances with banks under section 15, and the recognition of banks for this purpose ;

1. Substituted by the A. O. for "L. G."

2. As to the procedure for previous publication, see the B. and O. General Clauses Act, 1917 (B. and O. Act I of 1917), s. 26, printed ante, p. 271.

3. For rules made under this section, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

4. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1943 (Orissa Act V of 1943), s. 3.

5. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 15 (1). The original cl. (c) was omitted by the A. O.

(Sec. 33)

¹[(*hh*) the conditions under which and the security on which loans shall be granted or guarantees of a cash credit, overdraft or fixed advance with a bank given to industries referred to in section 15A ;]

(*i*) the fixing of the period for the repayment of loans under section 14 and the conditions and dates of the repayment of subsidies and grants [and the rate of profits]² under section 17 ;

(*j*) the application under section 18 of profits in the cases in which the conditions on which State aid has been given have not been fulfilled ;

(*k*) the appointment and functions of Government directors under section 19 and the prescribing of other methods of control of industries to which State aid has been given ;

³[(*kk*) fees that may be charged under section 20A ;]

(*l*) the percentage of the cost of machinery to be deposited under section 21 ;

(*m*) the additional particulars to be specified in the order referred to in section 22, and the conditions on which machinery may be supplied on the hire-purchase system ;

(*n*) the form of the metal plate referred to in clause (*e*) of section 23 ;

(*o*) the proportion of the interest on the cost of the machinery payable under section 25 ;

(*p*) the manner in which machinery may be returned to Government under section 26 ; and

(*q*) the recovery of any sums payable under this Act.

33. No State aid shall be given by the [Provincial Government]⁴ to any industry, except agriculture, save in accordance with the provisions of this Act :

Provided that nothing in this Act shall apply to the power of the [Provincial Government]⁴ to—

(a) start or conduct an industry for experimental purposes or with a view to stimulate industrial development ;

(b) assist an industry by agreement to purchase on business terms the whole or a portion of the products of the same ;

(c) assist an industry by giving free of charge or on favourable terms, the services of Government officials or experts either in the capacity of advisers or for a

No State aid to be given save in accordance with provisions of Act.

1. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 15 (2).

2. Inserted by *ibid*, s. 15 (3).

3. Inserted by *ibid*, s. 15 (4).

4. Substituted by the A. O. for "L. G."

(Sec. 33)

limited period not exceeding one year for starting or conducting such industry;

(d) assist an industry in connection with industrial education or the training of apprentices;

(e) acquire land under the provisions of the Land Acquisition Act, 1894¹, for a company ; *²

(f) assist a company formed for the purpose of supplying electricity, gas, water or any other service which in the opinion of the [Provincial Government]³ is likely to prove useful to the public ; [or]⁴

⁵[(g) assist a village industry in any manner which may be determined by the Provincial Government.]

1. Printed in Central Acts, Vol III, p. 481.

2. The word "or" omitted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 16 (1).

3. Substituted by the A. O. for "L. G."

4. Inserted by the B. and O. State Aid to Industries (Orissa Amendment) Act, 1947 (Orissa Act XXII of 1947), s. 16 (2).

5. Inserted by *ibid*, s. 16 (3).

BIHAR AND ORISSA ACT I OF 1924

[THE BIHAR AND ORISSA (CENTRAL PROVINCES MUNICIPAL)
REPEALING ACT, 1924]

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BIHAR AND ORISSA ACT I OF 1924

[THE BIHAR AND ORISSA (CENTRAL PROVINCES MUNICIPAL) REPEALING ACT, 1924]¹

(16th April, 1924)

An Act to repeal the Central Provinces Municipal Act, 1903,
in its application to Bihar and Orissa

Whereas it is expedient to repeal the Central Provinces Municipal Act, 1903, in its application to Bihar and Orissa;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bihar and Orissa (Central Provinces Municipal) Repealing Act, 1924.

Short title and commencement

(2) It shall come into operation² only on such date and subject to such exceptions and modifications, if any, as the [Provincial Government]³ by notification in the [Official Gazette]⁴ may direct.

2. The Central Provinces Municipal Act, 1903, so far as it applies to Bihar and Orissa is hereby repealed.

Repeal of Act XVI of 1903 in Bihar and Orissa.

3. (1) The Municipality of Sambalpur, and the members of the Committee, and the President and Vice-President thereof shall be deemed to have been constituted, appointed and elected, as the case may be, under the Bihar and Orissa Municipal Act, 1922, and for the purposes of this section references in that Act to the Commissioners, the Chairman and the Vice-Chairman shall be deemed to be references to the said members, President and Vice-President respectively.

Continuity of Municipality, officers, appointments, rules, etc., not affected by repeal.

(2) All joint committees established, limits defined, appointments, rules and orders and bye-laws made, licences granted, notifications and notices issued, taxes and rates imposed and proceedings taken under the Central Provinces Municipal Act, 1903, shall, except as the [Provincial Government]³ may by notification⁶ otherwise direct, respectively be deemed, as far as may be, to have been established, defined, made, granted, issued, imposed and taken under the Bihar and Orissa Municipal Act, 1922.

1. Statement of Objects and Reasons, see the proceedings in Council, see Bihar & O. Act of 1922, Pt. II, p. 7.

2. The Act came into operation in the Sambalpur municipality in the district of Sambalpur on the 1st June 1924, see notification No. 203.L.S.G.R. dated the 9th May 1924, published in the B. & O. Gazette, 1924, Pt. II, p. 667.

3. Substituted by the A. O. for "G. in C."

4. Substituted by ibid for "Gazette."

5. Substituted by ibid for "L. G."

6. For notification under this section, cancelling notifications regarding imposition of a tax on vehicles, under the Central Provinces Municipal Act, 1903, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

(Secs. 4-7)

Passing of property, rights and liabilities to Commissioners elected and appointed under B. & O. Act VII of 1922.

Recovery of sums due to Committee.

Vacation of office by existing Committee, President and Vice-President.

4. All property, all rights of whatever kind used, enjoyed or possessed by, and all interests of whatever kind owned by, or vested in, or held in trust by or for, the Committee of the Municipality of Sambalpur, as well as all liabilities legally subsisting against the said Committee, shall pass to the Commissioners elected and appointed under the Bihar and Orissa Municipal Act, 1922.

5. All rates, taxes, payments by way of composition for a rate or tax and all sums of money otherwise due to the Committee of the Municipality of Sambalpur may be recovered as though they had accrued due under the Bihar and Orissa Municipal Act, 1922.

6. Notwithstanding anything contained in Chapter II of the Bihar and Orissa Municipal Act, 1922, the terms of office of the President and Vice-President and members of the Committee of the Municipality of Sambalpur shall expire on such date or dates, not later than one year after the commencement of this Act, as the [Provincial Government]¹ may determine, and the [Provincial Government]¹ shall make

B. & O. A.
VII of 1924

rs to be prepared by the
election to be made under
so that the Commissioners
newly elected and appointed under that Act shall come into office on
the date fixed for the retirement of the said Committee :

Provided that—

(i) if any vacancy occurs in the office of a member of the said Committee before a register of voters has been prepared under the Bihar and Orissa Municipal Act, 1922, the register of voters in force immediately before the commencement of this Act shall continue to operate for the purposes of such election ; and

(ii) the President and Vice-President elected or appointed under the Central Provinces Municipal Act, 1903, shall continue in office until a Chairman has been elected or appointed under the Bihar and Orissa Municipal Act, 1922, and shall then vacate office.

Provision for exercise of extra-ordinary powers.

7. At any time within one year after the commencement of this Act the [Provincial Government]¹, or the Committee of the Municipality of Sambalpur at a meeting with the previous sanction of the [Provincial Government]¹, may constitute a body of Commissioners for the purpose of newly constituting the body of Commissioners under that Act or bringing all or any of its provisions into force for the first time.

¹. Substituted by the A. O. for "L. G."

BIHAR AND ORISSA ACT III OF 1924

(THE BIHAR AND ORISSA AERIAL ROPEWAYS ACT, 1924)

CONTENTS

PREAMBLE

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4. Application for sanction for aerial ropeway
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land not belonging to promoter.
6. Disposal of application
7. Rights of user
8. Compensation or rent
9. Acquisition of land
10. Notice to be given before working mines near post
11. Inspection of aerial ropeway before opening
12. Appointment and duties of inspectors
13. Powers of inspectors
14. Facilities to be afforded to inspectors
15. Protection of roads, railways, tramways and waterways
16. Reporting of accidents
17. Penalty for constructing or working ropeway without sanction
18. Failure of promoter to comply with Act
19. Prosecution of promoter
20. Unlawfully obstructing promoter in exercise of his powers
21. Unlawfully interfering with aerial ropeway
22. Power of Provincial Government to make rules
23. Application of Act to aerial ropeways constructed before, or
under construction at time of, its commencement.

BIHAR AND ORISSA ACT III OF 1924

[THE BIHAR AND ORISSA AERIAL ROPEWAYS ACT, 1924]¹

(22nd October, 1924)

An Act to authorise, facilitate and regulate the construction and working of aerial ropeways in Bihar and Orissa

Whereas it is expedient to authorize, facilitate and regulate the Preamble, construction and working of aerial ropeways in Bihar and Orissa;

And whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80A of the Government of India Act, to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bihar and Orissa Aerial Ropeways Act, 1924.

Short title,
extent and
commencement.

(2) It extends by its own operation to the districts of Hazaribagh and Manbhum and may be extended by the [Provincial Government]² by notification to any other district or portion thereof.

(3) It shall come into operation³ on such date and subject to such exceptions and modifications, if any, as the [Provincial Government]⁴ may by notification direct.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) "aerial ropeway" means an aerial ropeway (or any portion thereof) for the carriage of passengers, animals or goods, and includes all ropes, posts, carriers, stations, offices, warehouses, workshops, machinery and other works used for the purposes of, or in connection with, and all land appurtenant to, such aerial ropeway;

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the B. & O. Gazette, 1924, Pt. V, p. 12; for the Report of the Select Committee, see ibid, p. 32; and for Proceedings in Council, see Bihar and Orissa Legislative Council Debates, 1924, Vol. IX, p. 769 and Vol. X, p. 360.

LOCAL EXTENT.—See s. 1 (2). This Act has been extended to the areas tran...
see but Gar (O Sar

leg iv of 1945, s. 2.

The application of this Act is barred in—

(i) the district of Angul by the Angul Laws Regulation, 1936 (Orissa Reg. V of 1936), s. 3 (2).

(ii) the district of Khondmals by the Khondmals Laws Regulation, 1936 (Orissa Reg. IV of 1936), s. 3 (2).

2. Substituted by the A. O. for "L G."

3. The Act came into operation on the 1st January 1925, see notification No. 3437-Com., dated the 25th November 1924, in the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

4. Substituted by the A. O. for "G. in C."

(Secs. 3-4)

(2) "inspector" means inspector of aerial ropeways appointed under this Act;

(3) "post" includes any trestle, standard, stay, strut or other contrivance for carrying, suspending or supporting a rope;

(4) "promoter" means any person in whose favour an order has been made under section 6; and

(5) "rope" includes any cable, wire, rail or way, whether flexible or rigid, for suspending, carrying, or hauling a truck, carrier or other vehicle, if any part of such cable, wire, rail or way is carried overhead and is suspended or supported on posts.

Sanction for opening of aerial ropeway.

3. No person shall construct or work an aerial ropeway except with the sanction of the [Provincial Government]¹.

Application for sanction for aerial ropeway.

4. (1) An application by an intending promoter for sanction to construct or work an aerial ropeway shall be made to the [Provincial Government]¹ and shall be accompanied by such particulars², estimates, plans and drawings as the [Provincial Government]¹ may require.

(2) The [Provincial Government]¹ may accord sanction to an intending promoter to enter on any immovable property and to make such surveys as may be necessary to enable him to furnish the information required by the [Provincial Government]¹ under sub-section (1) :

Provided that—

(a) the intending promoter shall not be entitled to enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so; and

(b) the intending promoter shall before he enters any immovable property pay or tender payment for all necessary damage to be done and in case of dispute as to the sufficiency of the amount so paid or tendered he shall at once refer the dispute to the Collector whose decision shall be final.

1. Substituted by the A. O. for "L. G."

2. For notification, under this section, prescribing the particulars to be furnished with the application, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

(Sec. 5)

5. (1) When the application is for sanction to construct or work an aerial ropeway in land not belonging to the intending promoter, the [Provincial Government]¹ shall cause notice of such application together with a draft of the proposed order under section 6 to be published in the [Official Gazette]² and at convenient places on or near the route along which the aerial ropeway is intended to be constructed or worked, and to be served on the occupiers (if any) of land, and on all persons known or believed to be interested in land, on such route in the manner prescribed by section 9 of the Land Acquisition Act, 1894, and shall in such notice fix a date, which shall not be less than sixty days from the date of the publication in the [Official Gazette]² of the aforesaid notice and draft of the proposed order after which the application, and any objection or suggestion with respect thereto which may be received from any person on or before such date, will be considered.

Procedure where application is in respect of aerial ropeway on land not belonging to promoter.

- (2) The draft of the proposed order may specify—
- (i) a time within which the construction shall be commenced;
 - (ii) a time within which the construction shall be completed;
 - (iii) the conditions relating to the structural design, quality of materials, factors of safety, method of computing stresses, and other such technical details as may be considered necessary;
 - (iv) the conditions relating to the construction of the ropeway over mining properties in accordance with rules made under section 22 and over public ways of communication;
 - (v) the conditions under which the promoter may sell or transfer his rights to any person;
 - (vi) the motive power to be used on the ropeway and the conditions (if any) on which such power may be used;
 - (vii) the minimum headway to be maintained under different parts of the rope;
 - (viii) the points under the rope at which bridges or guards shall be constructed and maintained;
 - (ix) the amount of security (if any) to be deposited by the promoter in the event of his application being granted;
 - (x) the traffic which may be carried on the ropeway; and,
 - (xi) such other matters as the [Provincial Government]¹ may deem necessary.

1. Substituted by the A. O. for "L. G."

2. Substituted by ^{ibid} for "Gazette".

(Secs. 6-8)

Disposal of application.

¹6. (1) If after considering the application and, in the case of an application mentioned in section 5, any objections or suggestions which may have been made in respect of the application or the draft of the proposed order on or before the specified date, the [Provincial Government]² is of opinion that the application should be granted with or without modifications, or subject or not to any restrictions or conditions, the [Provincial Government]² shall make an order accordingly :

³[Provided that, where the aerial ropeway is to be constructed or worked in whole or in part over any railway or tramway which is under the jurisdiction of the Central Government, the [Provincial Government] shall specify the conditions, which shall be observed by the Federal Railway Authority, or the Central Government, of such construction or working.]

(2) Every order granting such an application shall be published in the [Official Gazette].⁴

Rights of user

⁷ VII.—Notification conferring to construct or work an aerial ropeway.—(1) No person shall construct or work an aerial ropeway unless he has been granted, in writing, permission necessary for the construction and working of the aerial ropeway, and in conformity with the order made under section 6,—

- (a) to enter on any immovable property;
- (b) with the sanction of the Collector to fix, maintain or remove any post;
- (c) with the sanction of the Collector, to suspend and maintain a rope over, along and across any property, and to carry vehicles on such rope; and
- (d) with the sanction of the Collector, to remove any tree which interferes or is likely to interfere with the construction or working of the aerial ropeway:

Provided that—

- (i) the promoter shall cause as little damage as possible in the exercise of the powers conferred by this section; and
- (ii) nothing in this section shall confer on the promoter any right other than that of user in any immovable property.

Compensation or rent.

8. (1) The promoter shall pay such compensation or annual rent or both in respect of the exercise of the powers conferred by section 7 to such persons as the Collector may, on the application of the promoter or of any person claiming to be entitled to compensation or annual rent or both, determine.

1. For notifications, under this section, granting permission to certain companies to construct and work aerial ropeways, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

2. Substituted by the A. O. for "L. G."

3. Substituted by *ibid.* for the original proviso.

4. Substituted by *ibid.* for "Gazette".

(Sects. 9-11)

(2) No suit shall lie in respect of any matter referred to in subsection (1) but every order of the Collector thereunder shall be subject to revision by the District Judge on the application of any person made within three months of the date of the Collector's order.

9. (1) Where the [Provincial Government]¹ is satisfied that the construction or working of an aerial ropeway for private traffic is likely to prove useful to the public by reason of its facilitating the transport of commodities in general use or is required for the conservation or service of undertakings supplying those commodities, and where the promoter of such aerial ropeway is desirous of obtaining any land for the purpose of such construction or working, the [Provincial Government]¹ may, on the application of such promoter, acquire on his behalf such land under the provisions of Part VII of the Land Acquisition Act, 1894².

Acquisition
of land.

(2) For the purposes of such acquisition references in the aforesaid provisions to a company shall be deemed to be references to the promoter; and the words "the terms on which the public shall be entitled to use the work" in section 41 and the words and brackets "(so far as regards the terms on which the public shall be entitled to use the work)" in section 42 of the said Act shall be deemed to be omitted.

10. (1) The owner or agent of a mine as defined in section 3 of the Indian Mines Act, 1923³, or the manager of a mine appointed under section 15 of that Act, shall give to such authority as the [Provincial Government]¹ may by general or special order direct sixty days' notice before commencing or extending any mining operations under his control at or to any point within such distance of any post appertaining to an aerial ropeway as the [Provincial Government]¹ may prescribe by rule made under this Act.

Notice to be
given before
working
mines near
post.

(2) For the purposes of the application of the provisions of the Land Acquisition (Mines) Act, 1885,⁴ to land acquired under section 9, a notice under this section shall have the same effect as notice under section 4 of that Act.

Inspection
of aerial
ropeway
before
opening

11.
aerial ro[pe]yway [Provincial Government]¹ was used for that purpose. Such sanction shall not be given until an inspector has, after inspection of the aerial ropeway, reported in writing to the [Provincial Government]¹—

1. Substituted by the A. O. for "L. G."
2. Printed in Central Acts, Vol. III, p. 451.
3. Printed in Central Acts, Vol. VII, p. 387.
4. Printed in Central Acts, Vol. III, p. 233.

(Secs. 12-15)

- (a) that he has made a careful inspection of the aerial ropeway and its appurtenances;
- (b) that the terms of the order made under section 6 have been complied with;
- (c) that the aerial ropeway is fit, and sufficiently equipped, for the traffic for which it is intended; and
- (d) that the aerial ropeway can, in his opinion, be used without danger to the persons carried or employed thereon and to the general public.

(2) The provisions of sub-section (1) shall extend to the opening of additional sections of the aerial ropeway and to deviation lines and to any alteration or reconstruction materially affecting the structural character of any work to which the provisions of sub-section (1) apply or are extended by this sub-section.

Appointment and duties of inspectors.

12. (1) The [Provincial Government]¹ may appoint² such persons as it deems fit, to be inspectors of aerial ropeways and may fix the fees to be charged to promoters for the performance by inspectors of their duties under this Act.

(2) It shall be the duty of an inspector from time to time to inspect aerial ropeways, and to determine whether they are maintained in a fit condition and worked with due regard to the safety of the persons carried or employed thereon and of the general public and consistently with the provisions of this Act and of the rules made thereunder and with the terms of the order made under section 6.

Powers of inspectors.

13. An inspector may exercise any of the duties which he is authorized to exercise, and may do anything which he deems to be a public convenience in connection therewith. He shall, for that purpose, have such powers as may be prescribed by rules made under this Act.

Facilities to be afforded to inspectors.

14. The promoter and his servants and agents shall afford to an inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act, and by rules made thereunder.

Protection of roads, railways, tramways and waterways

15. No promoter shall, in the course of the construction, repair, working or management of an aerial ropeway, cause any permanent injury to any public road, railway, tramway or waterway, or obstruct or interfere with, otherwise than temporarily, as may be necessary, the traffic on any public road, railway, tramway or waterway.

1. Substituted by the A. O. for "L. G."

2. For appointment made under this sub-section, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

(Secs. 16-19)

16. When in the course of working an aerial ropeway any accident occurs which causes loss of life or serious bodily injury or serious injury to property or is of any other description which the [Provincial Government]¹ may specify in this behalf in rules made under this Act, the promoter shall give such notice of the occurrence to such authorities, and in such form, and within such time, as may be prescribed by rules made under this Act

Reporting of accidents.

17. Any person who contravenes the provisions of section 3 shall be punishable with fine which may extend to two hundred and fifty rupees and in the case of a continuing offence to a further fine which may extend to one hundred rupees for every day after the first during which the offence continues to be committed.

Penalty for constructing or working ropeway without sanction.

18. If a promoter of an aerial ropeway—

- (a) opens an aerial ropeway without the sanction of the [Provincial Government]¹; or
- (b) constructs or works an aerial ropeway otherwise than in accordance with the terms of an order made under section 6; or
- (c) fails to pay within a reasonable time any compensation awarded by the Collector under section 8; or
- (d) fails to comply with the provisions of section 14; or
- (e) contravenes any of the provisions of section 16; or
- (f) fails to send notice of any accident as required by section 16; or
- (g) contravenes the provisions of any rule made under section 22;

Failure of promoter to comply with Act.

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act, or of any other remedy which may be available to him) be punishable with fine which may extend to two hundred and fifty rupees and in the case of a continuing offence, to one hundred rupees for every day after the first during which the offence continues to be committed.

19. No prosecution shall be instituted against a promoter for any offence under this Act except at the instance of an inspector or any other officer of the Provincial Government and no court shall take cognizance of any offence under this Act unless thereof has been made a complaint in writing by the inspector or other officer of the Provincial Government to whom the offence is alleged to have been committed.

Prosecution of promoter.

1. Substituted by the A. O. for "L. O."

(Secs. 20-22)

**Unlawfully
obstructing
promoter in
exercise of
his powers.**

20. If any person without lawful excuse, the burden of proving which shall be upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing, maintaining, altering, repairing or working an aerial ropeway, or injures or destroys any mark made for the purpose of setting out the line or route of such ropeway, he shall be punished with fine which may extend to two hundred rupees.

**Unlawfully
interfering
with aerial
ropeway.**

21. If any person without lawful excuse, the burden of proving which shall be upon him, wilfully does any of the following things, namely :—

- (a) interferes with, removes or alters any part of an aerial ropeway;
- (b) does anything in such a manner as to obstruct any vehicle travelling on an aerial ropeway ;
- (c) attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause (a) or clause (b);

he shall (without prejudice to any other remedy which may be obtained against him in a court of civil judicature) be punishable with fine which may extend to two hundred rupees.

**Power of
Provincial
Government
to make
rules.**

22. (1) The [Provincial Government]¹ may, after previous publication², make rules³ to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the [Provincial Government]¹ may make rules for all or any of the following purposes, namely :—

- (a) for providing for the safety of persons carried on, and employed in the working of, aerial ropeways, and of the general public ;
- (b) for prescribing and regulating the duties and powers of inspectors ;
- (c) for prescribing the conditions under which licences for the construction of aerial ropeways over mining properties shall be granted, including conditions as to the assessment and payment of compensation for loss caused by the interruption of the getting of minerals by reason of such construction and conditions as to the removal of any portion of the ropeway to another

1. Substituted by the A. O. for "L. G."

2. As to previous publication, see the B. and O. General Clauses Act, 1917 (B. & O. Act I of 1917), s. 26, printed ante, p. 271.

3. For rules made under this section, see the B. & O. Local Statutory Rules and Orders, Vol I, Pt. VII

(Sec. 23)

alignment, to be fixed by arbitration if necessary, if at any time in the opinion of the [Provincial Government]¹ the ropeway interferes with the raising of minerals;

- (d) for prescribing the method of arbitration for the settlement of disputes,
- (e) for the protection from injury in respect of aerial ropeways of property vested in His Majesty or any local authority or railway company as defined in the Indian Railways Act, 1890²,
- (f) for prescribing the standard dimensions and specifications to which an aerial ropeway shall conform;
- (g) for prescribing the distance from a post appertaining to an aerial ropeway up to which the commencement or extension of mining operations by the owner, agent or manager of a mine requires notice to be given under section 10;
- (h) for determining the fees to be charged to promoters and other persons in respect of inquiries, inspections, and services rendered under this Act;
- (i) for specifying the description of accidents of which notice shall be given under section 16;
- (j) for prescribing the duties of the promoter's servants, police officers and magistrates on the occurrence of an accident; and
- (k) for prescribing the manner in which notices under this Act shall be served.

³[(3) The Central Government may after previous publication make rules for the protection from injury in respect of aerial ropeways of property vested in His Majesty for the purposes of the Central Government, and of property vested in any person for the purposes of any railway or tramway which is a railway for the purposes of the Government of India Act, 1935, and, subject to any rules so made, the Federal Railway Authority may make rules for the protection from injury as aforesaid of property vested in any person for the purposes of any such railway or tramway.]

23. The provisions of this Act, except sections 3, 4, 5, 6, 7, 8, 17 and clauses (a), (b) and (c) of, and the reference thereto in, section 18 shall so far as may be also apply to aerial ropeways constructed before, or under construction at the time of, the commencement of this Act as if the owner of any such ropeway were the promoter, and all the provisions of this Act shall apply also to any extension of such aerial ropeways and any material alteration or reconstruction thereof.

Application
of Act to
aerial
ropeways
constructed
before
the
commencement
of this
Act

1. Substituted by the A. O. for "L. G."

2. Printed in Central Acts, Vol. III, p. 350.

3. Inserted by the A. O.

BIHAR AND ORISSA ACT I OF 1926

[THE BIHAR AND ORISSA MUSSALMAN WAKF (AMENDMENT)
ACT, 1926]

(10th March, 1926)

An Act to amend the Mussalman Wakf Act, 1923²

Whereas it is expedient to amend the Mussalman Wakf Act, Preamble, 1923², in the manner hereinafter appearing;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bihar and Orissa Mussalman Wakf (Amendment) Act, 1926.

Short title
and com-
mencement.

(2) It shall come into force on such date³ as the [Provincial Government]⁴ may by notification direct.

2. In section 8 of the Mussalman Wakf Act, 1923², after the word "written" the words "in Urdu or" shall be inserted.

Amendment
of section 8
of Act XLII
of 1923

1. For Statement of Objects and Reasons, see the B. & O. Gazette, 1926, Pt. V, p. 38 ; and for Proceedings in Council, see Bihar and Orissa Legislative Council Debates, 1926, Vol. XIII, pp. 91, 121 and 134.

LOCAL EXTENT.—The application of this Act is barred in—

(i) the district of Angul by the Angul Laws Regulation, 1936 (Orissa Reg. V of 1936), s. 3 (2) ;

(ii) the district of Khondmals by the Khondmals Laws Regulation, 1938 (Orissa Reg. IV of 1938), s. 3 (2).

2. Printed in Central Acts, Vol. VII, p. 664.

3. The Act came into force on the 15th May 1926, see notification No 30-D, R., dated the 10th May 1926, in the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

4. Substituted by the A. O. for "L. G."

BIHAR AND ORISSA ACT III OF 1926
(THE BIHAR AND ORISSA HIGHWAYS ACT, 1926)

CONTENTS

PREAMBLE

SECTIONS

1. Short title, extent and commencement
2. Definition
3. Temporary closing of Government road
4. Power to make rules
5. Penalties

(Sects 3-4)

(c) all bridges, culverts or causeways built on or across any Government road ; and

(d) all fences and posts on any Government road or on any land attached to a Government road, and all road-side trees on such land.

Temporary closing of Government road.

3. The [Provincial Government]¹ or any officer empowered by the [Provincial Government]¹ in this behalf may, by public notice, displayed in a conspicuous portion of the road, declare any Government road or part thereof to be closed temporarily for the purpose of repairing such road, or for the purpose of constructing any sewer, drain, culvert or bridge, or for any other similar public purpose

Provided that the [Provincial Government]¹ or any officer empowered by the [Provincial Government]¹ in this behalf shall, before declaring any such road or part thereof to be closed, be bound, where possible, to provide other reasonably sufficient means of access to holdings adjacent to such road or part, if no such means of access already exist :

Provided also that where there is a stretch of road over half a mile in length, the road or part thereof closed at any one time shall not exceed half a mile in length, and that, where possible, in such closed parts, an alternative route shall be provided.

Power to make rules

4. (1) The [Provincial Government]¹ may make rules²

(i) for the regulation and safety of traffic on Government roads ;

(ii) for the prevention of obstruction and encroachments and of nuisances on or near such roads ;

(iii) for the preservation of such roads ; and

(iv) for the temporary closing of such roads for repairs or other works, or for the purposes specifically set forth in section 3.

(2) All rules made under this section shall be published in the [Official Gazette]³ and, on such publication, shall have the same effect as if enacted in this Act.

(3) The power to make rules under this section is subject to the condition of the rules being made after previous publication⁴ and to the following further conditions, namely :—

1. Substituted by the A. O. for "L. G."

2. For rules made under s. 4(1), see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII.

3. Substituted by the A. O. for "Gazette".

4. As to the procedure for previous publication, see the B. and O. General Clauses Act, 1917 (B. & O. Act I of 1917), s. 26, printed ante, p. 271.

(Sec. 5)

- (a) a draft of the rules shall be published by notification in the [Official Gazette]¹ and in local newspapers, and
- (b) such draft shall not be further proceeded with until after the expiration of a period of one month from such publication.

5. In making any rule under this Act, the [Provincial Government]² may direct that a breach thereof shall be punishable with a fine which may extend to ten rupees, and when the breach is a continuing one, with a further fine not exceeding one rupee for every day after the date of the first conviction during which the offender is proved to have persisted in the offence. Penalties.

1. Substituted by the A. O. for "Gazette."

2. Substituted by *ibid* for "L. G".

BIHAR AND ORISSA ACT I OF 1930

(THE BIHAR AND ORISSA MICA ACT, 1930)

CONTENTS

PREAMBLE

SECTIONS

1. Short title and extent
2. Definitions
3. Exemptions
4. Prohibition of possession of, and trading in, mica without licence, proprietor's certificate or digger's permit.
5. Grant of proprietor's certificate
6. Grant of licences
7. Exercise of powers of licensees or registered proprietors by agents
8. Registration of certain instruments authorizing extraction of mica.
9. Grant of digger's permit
- 10.
- 11.
12. I. for storing mica.
13. Inspection of mine worked by digger
14. Removal of mica
15. Removal of mica from mine worked by digger
16. Sale of mica by diggers
17. Penalties
18. Penalty for certain offences committed by diggers
19. Penalty for unauthorized removal of mica
20. Penalty for removal of mica from mine worked by digger
21. Penalty for obstructing inspection of mine worked by digger
22. Power of police officer to arrest without warrant
23. Seizure and detention of mica removed without pass
24. Power of search and seizure
25. Cancellation of licences
26. Delegation of powers and duties of District Magistrate
27. Power to make rules

BIHAR AND ORISSA ACT I OF 1930

(THE BIHAR AND ORISSA MICA ACT, 1930)¹

(4th June, 1930)

An Act to regulate the possession and transport of, and
trading in, mica

Whereas it is expedient to regulate the possession and transport
of, and trading in, mica;

And whereas, the previous sanction of the Governor-General
under sub-section (3) of section 80A of the Government of India Act
has been obtained to the passing of this Act;

It is hereby enacted as follows :—

PRELIMINARY

1. (1) This Act may be called the Bihar and Orissa Mica Act, 1930. Short title
and extent.

(2) It shall apply only to those districts or parts of districts
in the province of Bihar and Orissa to which the [Provincial Govern-
ment]² may by notification³ extend it.

2. In this Act, unless there is anything repugnant in the subject Definitions.
or context,—

(a) "digger" means a person to whom a digger's permit has
been granted under section 9;

(b) "digger's permit" means a permit granted for not more than
one year authorizing the person to whom it is granted to have in his
possession and sell mica extracted from a mica mine worked by him on
his own behalf;

(c) "licensee" means a person to whom a mica miner's licence
or a mica dealer's licence has been granted;

(d) "manufactured mica" means mica in any form other than
the form of crude mica, slab mica, chillas or splittings;

(e) "mica dealer's licence" means a licence authorizing the
person to whom it is granted to buy mica, and to have in his posses-
sion and sell mica extracted from a mica mine of which he is not in
possession or from a mica dump ;

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the
B. & O. Gazette, 1929, Pt. V, p. 130; for Report of the Select Committee, see ibid,
1930, Pt. V, p. 2; and for Proceedings in Council, see Bihar and Orissa Legislative
Council Debates, 1929, Vol. XX, pp. 543, 603 and 691; and 1930, Vol. XXI, pp.
173, 438, 455 and 496.

2. Substituted by the A. O. for "L. G."

3. For notifications applying the Act to certain districts, see the B. & O
Local Statutory Rules and Orders, Vol. I, Pt. VII.

(Secs. 3-4)

(f) "mica dump" means any collection of mica refuse or of material containing mica;

(g) "mica mine" means any excavation where any operation for the purpose of searching for or obtaining mica has been or is being carried on;

(h) "mica miner's licence" means a licence authorizing the person to whom it is granted to have in his possession and sell mica extracted from a mica mine of which he is in possession and which is situated in land of which he is not the proprietor or from a mica dump of which he is in possession;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "proprietor's certificate" means a certificate authorizing the person to whom it is granted to have in his possession and sell mica extracted from a mica mine of which he is in possession and which is situated in land of which he is the proprietor or from a mica dump of which he is in possession; and

(k) "registered proprietor" means a person to whom a proprietor's certificate has been granted.

Exemptions. 3. Nothing in this Act shall apply to the possession of any splittings, *chillas* or slab mica, if the largest rectangular area of sound mica which can be obtained therefrom is less than six inches.

RESTRICTIONS ON POSSESSION, PURCHASE AND SALE OF MICA

Prohibition of possession of, and trading in, mica without licence, proprietor's certificate or digger's permit. 4. (1) Save as provided in sub-section (2) and sub-section (3) of this section no person shall—

(a) have in his possession or sell mica extracted from a mica mine of which he is in possession and which is situated in land of which he is not the proprietor, except under and in accordance with a mica miner's licence or a digger's permit,

(b) have in his possession or sell mica extracted from a mica mine of which he is in possession and which is situated in land of which he is the proprietor, except under and in accordance with a proprietor's certificate,

(c) have in his possession or sell mica extracted from a mica dump of which he is in possession, except under and in accordance with a mica miner's licence, a mica-dealer's licence or a proprietor's certificate,

(d) buy mica, or have in his possession or sell mica extracted from a mica mine or mica dump of which he is not in possession, except under and in accordance with a mica-dealer's licence.

(Secs. 5-7)

(2) Nothing in this section shall apply to—

(a) the possession, sale or purchase of manufactured mica;

(b) the sale by a licensee or registered proprietor of mica to, or
to any person or registered proprietor by, any
business in any district or part of
India;

(c) the possession, sale or purchase of mica under such circumstances and subject to such conditions as may be specified by the [Provincial Government]¹ by notification.

(3) Any licensee whose licence ceases to be in force under subsection (3) of section 6, or is cancelled under sub-section (1) of section 25, shall be entitled, up to a date not later than six months after the date on which his licence ceases to be in force or is cancelled, as the case may be, to sell or otherwise dispose of any mica which was in his possession on the date on which his licence ceased to be in force or was cancelled.

LICENCES, CERTIFICATES AND PERMITS

5. The District Magistrate shall, on the application of any person who is a proprietor within the meaning of clause (8) of section 3 of the Land Registration Act, 1876², grant to such person a proprietor's certificate.

Grant of
proprietor's
certificate.

6. (1) The District Magistrate shall, on the application of any person and on payment by such person of a fee of fifty rupees, grant to such person a mica-miner's licence or a mica-dealer's licence.

Grant of
licences.

(2) There shall be paid to the District Magistrate in respect of every licence granted under sub-section (1) an annual fee of twenty-five rupees. Such annual fee shall be paid on the 1st day of January next following the date on which the licence is granted and on the 1st day of January in each succeeding year.

(3) If the fee payable under sub-section (2) in respect of any licence is not paid within one month of the date on which it is required by that sub-section to be paid, such licence shall cease to be in force.

7. The District Magistrate shall, on the application of a licensee or registered proprietor, endorse on his licence or proprietor's certificate, as the case may be, the names of persons who shall be entitled to exercise on behalf of such licensee or registered proprietor any of the powers conferred on him under this Act or his licence or proprietor's certificate, and no person whose name is not so endorsed shall be entitled to exercise any of the said powers on behalf of any licensee or registered proprietor.

Exercise of
powers of
licensees or
registered
proprietors
by agents.

1. Substituted by the A. O. for "L. G."

2. Printed in Vol. II of this Code, p. 169.

(Secs. 8-10)

Registration
of certain
instruments
authorizing
extraction
of mica.

8. Any person who has been authorized by the owner or lessee of any land by an instrument in writing to extract mica on his own behalf from such land for a period not exceeding one year, may apply to such officer as may be appointed¹ in this behalf by the [Provincial Government]² for the registration of such instruments, and such officer shall, on payment by such person of a fee of one rupee, register such instrument in the prescribed manner.

Grant of
digger's
permit.

9. (1) The District Magistrate shall, on the application of any person and on production by such person of an instrument registered by him under section 8, grant to such person a digger's permit.

(2) A fee of one rupee shall be payable for a digger's permit and no such permit shall be granted until such fee has been paid.

(3) A permit granted under sub-section (1) shall be in force for one year or for the period stated in the instrument referred to in sub-section (1), whichever is less.

(4) Every such permit shall specify—

- (a) the period for which it is in force,
- (b) the area within which the digger is authorized to extract mica,
- (c) the route or routes along which the digger shall transport mica, and
- (d) the place or places at which the digger shall sell mica.

DUTIES OF LICENSEES, REGISTERED PROPRIETORS AND DIGGERS

Accounts
to be kept
by licensees
and regis-
tered pro-
prietors.

10. (1) Every licensee and every registered proprietor shall submit such returns and in such form and manner as may be prescribed and shall keep accounts showing—

(a) in respect of crude mica, the following particulars, namely :—

- (i) the quantity received, the date of receipt and the source of supply,
- (ii) the quantity issued to cutters or disposed of and the date of such issue or disposal, and the name of the person, if any, to whom it is disposed of,
- (iii) the quantity of slab mica received from cutters, and the date of receipt,
- (iv) the quantity of chillas received from cutters, and the date of receipt, and

1. For notification appointing an officer to whom application shall be made for the registration of instruments relating to land, see the B. & O. Local Statutory Rules and Orders, Vol I, Pt. VII.

2. Substituted by the A. O. for "L. G."

(Secs. 11-12)

- (v) the quantity of the balance remaining in stock at intervals not exceeding seven days;
- (b) in respect of mica other than crude or manufactured mica, the following particulars, namely :—
 - (i) all additions to the stock, specifying the quantity and the size or, in the case of mica which has not been sorted into sizes, the description and the quantity, of the mica received and, in the case of purchase, the name of the person from whom it is purchased,
 - (ii) all issues from the stock, specifying—
 - (a) the quantity and the size or, in the case of mica which has not been sorted into sizes, the description and the quantity, issued,
 - (b) the purpose for which it is issued, and
 - (c) in the case of sale or export, the name of the purchaser or of the agent to whom it is exported, as the case may be, and
 - (iii) the quantity and the size or, in the case of mica which has not been sorted into sizes, the description and the quantity, of the balance remaining in stock at intervals not exceeding seven days.

(2) If the [Provincial Government]¹ is satisfied that the particulars specified in sub-section (1) are insufficient, it may by notification direct that accounts required to be kept under sub-section (1) shall show such additional particulars as may be specified in such notification, and thereupon every licensee and registered proprietor shall keep accounts showing such additional particulars in addition to the particulars specified in sub-section (1).

11. Every licensee and every registered proprietor shall, when so required by any officer authorized² in this behalf by the [Provincial Government]¹,—

(a) produce his accounts and disclose or produce the full amount of his stock of mica for the inspection of such officer,

(b) give such officer every facility for inspecting [any mica mine or mica dump of which he is in possession.

12. Every licensee, registered proprietor or digger shall notify to the prescribed authority and in the prescribed manner all places used by him whether for storing mica or for preparing the same for sale, and shall give to such authority every facility for inspecting such places.

Production
of accounts
by licensees
and regis-
tered
proprietors.

Licensee,
registered
proprietor
and digger
to notify
places used
for.

1. Substituted by the A. O. for "L. G."

2. For a list of such officers, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII, and also the Supplement to the B. & O. Local Statutory Rules and Orders, 1917, Vol. II, p. 100.

(Secs. 13-16)

Inspection
of mine
worked by
digger.

13. Any officer authorized¹ in this behalf by the [Provincial Government]² may inspect any mica mine worked by a digger, and the digger shall give to such officer every facility for inspecting such mine.

TRANSPORT OF MICA

14. (1) No person shall remove mica from any mica mine, mica dump or other place in the occupation of a licensee or of a registered proprietor unless he carries a pass in the prescribed form specifying the date and time of its issue signed by such licensee or registered proprietor or his duly authorized agent, showing—

(a) the place from which the mica has been removed;

(b) the quantity and the size or, in the case of mica which has not been sorted into sizes, the description and the quantity, of such mica; and

(c) the destination of such mica;

Provided that any person who is ordinarily engaged in the business of splitting mica may without a pass—

(i) remove slab mica or *chillas* of a size not exceeding the size mentioned in section 3, from any place in the occupation of a licensee or registered proprietor other than a mica mine or a mica dump, and

(ii) return to such licensee or registered proprietor splittings made from such slab mica or *chillas*.

(2) Any person who removes mica from a mica mine, mica dump or other place in the occupation of a licensee or of a registered proprietor and who is required by sub-section (1) to carry a pass shall, on being required to do so by any officer authorized¹ in this behalf by the [Provincial Government]², produce such pass to such officer.

15. No person other than the digger shall remove mica from any mine worked by a digger.

SALE OF MICA BY DIGGERS

Removal of
mica from
mine
worked by
digger.

Sale of
mica by
diggers.

at which, mica may be sold at such places.

(2) The District Magistrate may appoint an officer to be in charge of any place appointed under sub-section (1) for the sale of mica and such officer shall keep a register in the prescribed form of all sales of mica made by diggers at any such place.

1. For a list of such officers, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII, and also the supplement to the B. & O. Local Statutory Rules and Orders, 1917, Vol. II, pp. 106-107.

2. Substituted by the A. O. for "L. G."

(Sec. 17)

(3) Every sale of mica by a digger at a place appointed under sub-section (1) shall be made in the prescribed manner.

OFFENCES AND PENALTIES

17. (1) Save as provided in sub-section (2) and sub-section (3) of section 4 any person who — Penalties.

(a) has in his possession or sells any mica extracted from a mica mine of which he is in possession and which is situated in land of which he is not the proprietor, except under and in accordance with a mica miner's licence or a digger's permit ;

(b) has in his possession or sells any mica extracted from a mica mine of which he is in possession and which is situated in land of which he is not the proprietor, except under and in accordance with a

(c) buys mica, or has in his possession or sells mica extracted from a mica mine or mica dump of which he is not in possession, except under and in accordance with a mica dealer's licence ;

(d) has in his possession or sells mica extracted from a mica dump of which he is in possession, except under and in accordance with a mica miner's licence or a mica dealer's licence or a proprietor's certificate ;

(e) being a licensee, registered proprietor or digger, sells mica to any person other than a person to whom a mica dealer's licence has been granted and who resides or carries on business in a district or part of a district to which this Act applies ;

(f) being a person to whom a mica dealer's licence has been granted, buys mica from a person who is not a licensee or a registered proprietor or a digger and who resides or carries on business in a district or part of a district to which this Act applies ;

shall on conviction by a Magistrate of the first class be punishable with fine which may extend to five hundred rupees.

(2) Any licensee or registered proprietor who—

(a) fails to keep any account required to be kept by section 10 or keeps an account which does not contain the particulars required by the said section or which is false in any material particular ;

(b) fails to produce such accounts or to disclose the full amount of his stock of mica when so required under section 11 ;

(c) fails to submit any prescribed return or ~~return which is false in any material particular~~ ;

(d) refuses or wilfully neglects to afford to any ~~any~~ ~~any~~ ~~any~~ ~~any~~ under section 11 any reasonable facility for inspecting any mica or mica dump in his possession ;

(Secs. 18-21)

shall on conviction by a Magistrate of the first class be punishable with fine which may extend to five hundred rupees.

(3) Any licensee who fails to produce his licence within a reasonable time after being so required by the prescribed authority shall on conviction by a Magistrate of the first class be punishable with fine which may extend to fifty rupees.

(4) Any licensee, registered proprietor or digger who—

(a) fails to notify to the prescribed authority and in the prescribed manner the place or places used by him whether for storing mica or preparing it for sale ; or

(b) stores mica at any place other than a place notified in accordance with section 12 ;

shall on conviction by a Magistrate of the first class be punishable with fine which may extend to five hundred rupees.

18. (1) Any digger who—

(a) has in his possession any mica not extracted from the area specified in his permit ;

(b) transports mica except along a route specified in his permit ;

(c) sells mica except at a place specified in his permit ;

shall on conviction by a Magistrate of the first class be punishable with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees.

(2) If any digger is convicted of an offence under this section his permit shall be deemed to be cancelled with effect from the date of such conviction, and no fresh permit shall be granted to any such digger for one year after the date of such conviction.

19. Any person who removes mica in contravention of section 14 shall be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees.

20. Any person other than the digger who removes mica from a mica mine worked by a digger shall on conviction by a Magistrate of the first class be punishable with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees.

21. Any person who obstructs any officer authorized under section 13 in the performance of his duty under that section shall on conviction be liable to imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees.

Penalty for certain offences committed by diggers

Penalty for unauthorized removal of mica

Penalty for removal of mica from mine worked by digger.

Penalty for obstructing inspection of mine worked by digger.

(Sects. 22-24)

MISCELLANEOUS

22. Any police officer may arrest without warrant any person found committing an offence punishable under clause (c) of sub-section (1) of section 17, sub-section (1) of section 18, section 19 or section 20.

Power of police officer to arrest without warrant.

23. (1) Any officer authorized¹ in this behalf by the [Provincial Government]² may seize any mica which is removed from any place mentioned in sub-section (1) of section 14 by a person who does not carry a pass as required by that sub-section or who does not produce such pass when required to do so, and may detain such mica at the nearest police-station until the ownership thereof is established to the satisfaction of any Magistrate authorized in this behalf by the District Magistrate.

Seizure and detention of mica removed without pass.

(2) If the ownership of such mica is disputed or if the ownership thereof is not established to the satisfaction of the Magistrate, he shall refer the matter to the District Magistrate. If any claim made to the ownership of such mica is rejected by the District Magistrate or if no claim is made within one month from the date of detention, the mica shall be forfeited to Government:

Provided that when any such claim is rejected, the claimant may, within three months of the order rejecting the claim, apply to the Civil Court to set aside such order and the Court, if satisfied that such claimant is the owner of the mica, shall make an order for the delivery thereof to him.

24. (1) Whenever any officer authorized¹ in this behalf by the [Provincial Government]² has reason to believe that an offence punishable under clause (a), (b), (c) or (d) of sub-section (1), or clause (b) of sub-section (4) of section 17, or sub-section (1) of section 18 has been or is being committed in respect of any mica and that such mica is to be found in any building or place, and that a search warrant cannot be obtained without affording the offender an opportunity of concealing or removing such mica, he may, after recording the grounds of his belief, at any time by day or night, enter and search such building or place and seize any mica found therein in respect of which he has reason to believe that any offence referred to in this sub-section has been or is being committed :

Power of search and seizure.

Provided that no police officer whose rank is lower than that of an Inspector of Police shall be authorized to exercise the powers conferred by this section.

1. For a list of such officers, see the B. & M. Local Statutory and Orders, Vol. I, Pt. VII, and also the supplement to the B. & M. Local Statutory Rules and Orders, 1917, Vol. II, Pt. VII, Pt. III.

2. Substituted by the A. O. for "L. O."

(Sects. 25-27)

(2) Every officer seizing any mica under this section shall—

- (a) prepare a list of the mica so seized and deliver a copy thereof signed by him to the person found in possession of such mica,
- (b) enclose the mica seized in a package and place on such package a mark indicating that the mica therein contained has been seized, and
- (c) as soon as may be after such seizure, make a report thereof to the Magistrate having jurisdiction to try the offence on account of which such seizure has been made.

(3) Upon receipt of any such report the Magistrate shall with all convenient despatch take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

**Cancellation
of licences.**

25. (1) The [Provincial Government]¹ may cancel the licence of any licensee who—

- (a) is convicted of an offence under Chapter XVII of the Indian Penal Code committed in respect of mica, or
- (b) is guilty of repeated failure to comply with any of the provisions of this Act :

Provided that a licence shall not be cancelled solely by reason of a conviction from which the licensee has no right of appeal.

(2) A fresh licence shall not, without the previous sanction of the [Provincial Government]¹, be granted to any licensee whose licence has been cancelled under this section.

**Delegation
of powers
and duties
of District
Magistrate.**

26. The District Magistrate may, with the previous approval of the Commissioner, delegate any of the powers or duties conferred or imposed on him by this Act to any Magistrate of the first class.

**Power to
make rules**

27. (1) The [Provincial Government]¹ may, after previous publication², make rules³ to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the [Provincial Government]¹ may make rules for prescribing—

- (a) the form of the proprietor's certificate or digger's permit or of any licence ;

1. Substituted by the A. O. for "L. G."

2. As to the procedure for previous publication, see the B. and O. General Clauses Act, 1917 (B. & O. Act I of 1917), s. 26, printed ante, p. 271.

3. For rules under s. 27, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII, and also supplement to the B. & O. Statutory Rules and Orders, 1917, Vol. II, pp. 103-113.

(Sec. 27)

- (b) the manner in which instruments shall be registered under section 8;
- (c) the returns to be submitted by any licensee, or registered proprietor and the form or manner in which such returns shall be submitted;
- (d) the authority to whom and the manner in which licensees, registered proprietors and diggers shall notify the place or places at which they store or prepare mica for sale;
- (e) the form of the pass referred to in section 14;
- (f) the manner in which sales by a digger at a place appointed under sub-section (1) of section 16 shall be made, and the form of the register referred to in sub-section (2) of the said section; and
- (g) the authority referred to in sub-section (3) of section 17.

BIHAR AND ORISSA ACT II OF 1930
(THE BIHAR AND ORISSA MOTOR VEHICLES
TAXATION ACT, 1930)

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BIHAR AND ORISSA ACT II OF 1930

(THE BIHAR AND ORISSA MOTOR VEHICLES TAXATION ACT, 1930)¹

(3rd September, 1930)

An Act to impose a tax on motor vehicles in Bihar and Orissa

Whereas it is expedient to impose a tax on motor vehicles in Bihar and Orissa;

And whereas the previous sanction of the Governor-General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bihar and Orissa Motor Vehicles Taxation Act, 1930.

Short title and extent.

(2) It shall extend to the whole of the province of Bihar and Orissa including the Santal Parganas.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

1039. 2[(a) "registration" means registration under the Motor Vehicles Act, 1939, and the rules made thereunder,]

1939. 3[(b) "public place" has the same meaning as in the Motor Vehicles Act, 1939,]

1939. 4[(c) "motor vehicle" has the same meaning as in the Motor Vehicles Act, 1939,]

(d) "prescribed" means prescribed by rules made under this Act,

(e) "the tax" means the tax imposed under this Act, and

(f) "taxing officer" means an officer appointed under section 4.

Statement of Objects and Reasons, see
Select Committee, see
and Orissa Legislative
p. 29.

LOCAL EXTENT.—See s. 1 (2). This Act has been extended to areas transferred to Orissa from the Central Provinces by the Orissa Laws Regulation, 1936 (Orissa Reg. I of 1936), s. 11 and Fourth Sch.

It has been declared to be in force in the district of Angul by the Angul Laws Regulation, 1936 (Orissa Reg. V of 1936), s. 3 (2) and Sch.

2. Substituted by the B. and O. Motor Vehicles Taxation (Orissa Amendment) Act, 1943 (Orissa Act IX of 1943), s. 2 (1).

3. Substituted by *ibid*, s. 2 (3).

4. Substituted by *ibid*, s. 2 (3).

(Secs. 3-6)

Amendment
of B. & O.
Act VII of
1922.

3. The Bihar and Orissa Municipal Act, 1922, is hereby amended to the extent and in the manner stated in the First Schedule to this Act.

Appoint-
ment of
taxing
officers.

4. The [Provincial Government]¹ may by notification² appoint persons to exercise and perform within such area as may be specified in such notification the powers and duties conferred and imposed on the taxing officer by this Act or by any rules made thereunder.

Savings as
to vehicles
used for
agricultural
purposes.

5. Nothing in this Act shall apply to a motor vehicle used solely for the purposes of agriculture.

Explanation:—A motor vehicle used for transporting agricultural produce along a road shall not for the purpose of this section be deemed to be used solely for the purposes of agriculture.

Exemption.

³[5A. (1) The Provincial Government may by notification in the Gazette make an exemption, reduction in the rate or other modification in regard to the tax payable—

(i) by any person or class of persons, or

(ii) in respect of any motor vehicle or class of motor vehicles.

(2) Every notification issued under sub-section (1) shall be laid on the table of the Orissa Legislative Assembly for a period of fifteen days when the Assembly is in session.]

Imposition
of tax.

6. (1) As from the first day of January, 1931⁴, and after that date there shall be paid on every motor vehicle a tax at the rate specified in the Second Schedule to this Act.

(2) The tax shall be paid annually by the person who keeps a motor vehicle for use:

Provided that the tax may be paid—

(i) for one or more quarterly periods, on payment for each such quarterly period of one-quarter of the annual rate of the tax,

(ii) for any period less than a quarterly period expiring on the last date of any quarterly period, on payment of one-twelfth of the annual rate of the tax for every month or part of a month included in such period.

⁵(3) * * * *

1. Substituted by the A. O. for "L. G."

2. For notification under s. 4, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VII. and Orissa L. S. R. & O., Vol. I, pt. VII.

3. Inserted by the B. and O. Motor Vehicles Taxation (Orissa Second Amendment) Act, 1914 (Orissa Act VI of 1914), s. 2, Regarding exemption in the rate, see Orissa L. S. I. & O., Vol. I Pt. VII.

4. In view of ss. 1 (2) and 2 of the B. and O. Motor Vehicles Taxation (Orissa) Act, 1918 (Orissa Act XVII of 1918), the Figures '1931'

" Motor Vehicles Taxation
s. 3.

(Secs. 6A-7)

[6 A. When any person pays the amount of tax due in respect of a motor vehicle, the taxing officer shall grant to such person a tax token in such form as may be prescribed by the Provincial Government specifying the period for which tax has been paid.] Granting of tax token.

[6B. (1) The tax token granted in respect of a motor vehicle under section 6A shall be carried in a conspicuous place upon the vehicle in such a manner as may be prescribed by the Provincial Government, and if such a tax token is not so carried upon such vehicle the person who keeps the vehicle for use shall be punishable with fine which may extend to Rs. 50.] Carrying of tax token.

(2) Any police officer in uniform who is not below the rank of Sub-Inspector or who being below such rank is specially authorised in this behalf by the District Magistrate may require the driver of any motor vehicle in any public place to stop the vehicle and cause it to remain stationary so long as may reasonably be necessary for the purpose of satisfying himself that a tax token has been obtained in respect of such vehicle for the period then current.

(3) Any person failing to stop a motor vehicle when required to do so by a police officer in uniform under the preceding sub-section or resisting such officer shall be punishable with fine which may extend to Rs. 50.]

*[7. (1) When any person has paid the tax in respect of a motor vehicle he shall be entitled—

(a) on production of a certificate signed by the taxing officer stating that the tax token granted in respect of such vehicle has been surrendered, to a refund for each calendar month of the period for which such tax has been paid and which is unexpired on the date on which the tax token was surrendered of an amount equal to one-twelfth of the annual rate of tax payable on such vehicle, or

(b) on production of a certificate signed by the taxing officer stating that the tax token granted in respect of such vehicle has been surrendered and that an application for the registration of such vehicle for the first time has been refused, to a refund of the total amount of the tax paid.

(2) Before granting the certificate referred to in clause (b) of sub-section (1) the taxing officer shall satisfy himself in the prescribed manner that an application for the registration of the vehicle for the first time has been refused.]

Refund on surrender of registration certificate.

1. Inserted by the B. and O. Motor Vehicles Taxation (Orissa Amendment) Act, 1943 (Orissa Act IX of 1943), s. 4.

2. Substituted by ibid, s. 5 for the original s. 7.

(Secs. 8-11)

Declaration by person keeping motor vehicle for use.

8. (1) Every person who keeps a motor vehicle for use shall fill up and sign a declaration in the prescribed form stating the prescribed particulars and shall deliver the declaration as so filled up and signed to the taxing officer and shall pay to the taxing officer the tax which he appears by such declaration to be liable to pay in respect of such vehicle.

(2) Where a motor vehicle is altered so as to render the person who keeps such vehicle for use liable to the payment of an additional tax under section 9, such person shall fill up and sign an additional declaration, in the prescribed form showing the nature of the alterations made and containing the prescribed particulars and shall deliver such additional declaration as so filled up and signed to the taxing officer and shall pay to the taxing officer the additional tax payable under section 9 which he appears by such additional declaration to be liable to pay in respect of such vehicle.

(3) Every person who owns any motor vehicle which is let for hire shall, for the purposes of this Act, be deemed to be the person who keeps such vehicle for use.

Payment of additional tax.

9. Where any motor vehicle in respect of which the tax has been paid is altered in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, the person who keeps such vehicle for use shall be liable to pay an additional tax of a sum which is equal to the difference between the tax already paid in respect of such vehicle and the tax which is payable, in respect of such vehicle after its being so-altered,

* * * * *

Reduction of tax.

10. A person who keeps more than five motor vehicles for use solely in the course of trade or industry, shall be entitled, if the number of such vehicles is less than ten, to a deduction of ten *per centum*, and, if the number of such vehicles is not less than ten to a deduction of twenty *per centum* on the aggregate amount of the tax payable in respect of such vehicles.

Receipt for tax

11. The taxing officer shall grant and deliver to every person, who pays to him the tax or additional tax in respect of any motor vehicle, a receipt in which shall be specified the particulars of the tax paid and such other particulars as may be prescribed.

1. The words "and the licensing authority shall not grant a fresh certificate of registration or renew any certificate of registration in respect of such vehicle as so altered until such amount of tax has been paid" omitted by the B. and O. Motor Vehicles Taxation (Orissa Amendment) Act, 1943 (Orissa Act IX of 1943), s. 6.

(Sects. 12-14)

12. Whoever—

(a) keeps a motor vehicle for use without having paid the tax or additional tax in respect of such vehicle, or

(b) delivers a declaration or additional declaration wherein the particulars required by or under this Act to be therein set forth are not fully and truly stated,

shall be punishable with fine not exceeding, in the case of the first conviction, one and a half times, and in the case of a second or any subsequent conviction, twice, the amount of the annual tax payable for the motor vehicle in respect of which the offence is committed.

13. No court inferior to that of a Magistrate of the second class shall try any offence punishable under this Act.

[13A. Notwithstanding anything contained in this Act, a tax paid in respect of any motor vehicle under the Madras Motor Vehicles Taxation Act, 1931, in respect of which a licence has been granted under sub-clause (i) of clause (a) of sub-section (3) of section 5 of the Madras Motor Vehicles Taxation Act, 1931, by a licensing officer appointed for the whole or any part of the areas transferred to Orissa from the Presidency of Madras shall be valid throughout the whole of Orissa and shall be deemed, so far as may be, to have been paid under this Act.]

[13B. Any tax due under this Act may be recovered in the same manner as an arrear of land revenue. The motor vehicle in respect of which tax is due or its accessories may be distrained and sold in pursuance of this section, whether or not such vehicle is, or such accessories are, in possession or control of the person liable to pay the tax.]

[13C. No prosecution, suit or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.]

14. (1) The [Provincial Government]³ may, after previous publication⁴, make rules⁵ for the purpose of carrying into effect the provisions of this Act.

Trial of offences

Validity of tax paid under Madras Motor Vehicles Taxation Act, 1931.

Tax to be recovered as an arrear of land revenue.

Legal Proceedings

Power to make rules.

1. Inserted by the Orissa Laws Regulation, 1936 (Orissa Reg. I of 1936), s. 10 and Third Sch.

2. Inserted by the B. and O. Motor Vehicles Taxation (Orissa Amendment) Act, 1943 (Orissa Act IX of 1943), s. 7.

3. Substituted by the A. O. for "L. G."

4. As to the procedure for previous publication, see the B. and O. Clauses Act, 1917 (B. & O. Act I of 1917), s. 26, printed ante, p. 271.

5. For rules under s. 14, see the B. & O. Local Statutory Rules Orders, Vol. I, Pt. VII and Orissa L. S. R. & O. Vol. I, Pt. VIII.

(Sec. 14)

(2) In particular and without prejudice to the generality of the foregoing power, the [Provincial Government]¹ may make rules for all or any of the following purposes, namely :—

(a) to prescribe the form of any declaration, certificate, [tax token]² or receipt and the particulars to be stated therein,

(b) to prescribe what shall be deemed to be quarterly periods for the purposes of section 6,

(c) to prescribe the powers and duties of the taxing officer *

* * * * *

(d) to provide for the total or partial exemption from liability to payment of the tax of any motor vehicle brought into [the Province]³ by a person making a temporary stay in [the Province]⁴,

(e) to regulate the manner in which refunds or deductions or exemptions may be claimed, and

(f) to regulate the method of assessing and recovering the tax.

⁵[(3) Any rule made under sub-section (1) or (2) of this section may provide that a breach thereof shall be punishable with fine which may extend to Rs. 50.]

1. Substituted by the A. O. for "L. G."

2. Inserted by the B. and O. Motor Vehicles Taxation (Orissa Amendment Act, 1943 (Orissa Act IX of 1943), s. 8 (1) (a).

3. The words and of the licensing "authority" omitted by *ibid.* s. 8 (1) (b)

4. Substituted by the A. O. for "Bihar and Orissa".

5. Inserted by the B. and O. Motor Vehicles Taxation (Orissa Amendment) Act, 1943 (Orissa Act IX of 1943), s. 8 (2).

(The First Schedule)

THE FIRST SCHEDULE

(See section 3)

B & O. Act
II of 1922.*Amendments to the Bihar and Orissa Municipal Act, 1922*

(1) In section 3—

(a) For clause (30) the following shall be substituted, namely.—
(30) (Printed ante, p. 397.)

(b) After clause (30) the following clause shall be inserted, namely:—

(30A) (Printed ante, p. 397.)

(2) In section 82—

(a) in clause (f) after the words "tax on" the word "the" shall be inserted; and

(b) in clause (l) after the words "other tax" the words "except a tax on motor cars" shall be inserted.

(3) In section 137—

(a) in sub-section (1) after the words "tax on" the word "the" shall be inserted; and

(b) in sub-section (3), in clause (e), the words "other than motor vehicles" shall be omitted.

(4) For section 326 the following section shall be substituted, namely:—

326. (Printed ante, p. 496.)

(5) In sub-section (1) of section 328, for the words "any vehicle" the words "any motor car or vehicle" shall be substituted.

(6) In sections 332, 333, 334, 335, 336 and 337 for the words "registered vehicle" wherever they occur, the words "registered motor car or vehicle" shall be substituted, and for the words "such vehicle" wherever they occur, the words "such motor car or vehicle" shall be substituted.

(7) In section 334 for the words "the vehicle" wherever they occur, the words "such motor car or vehicle" shall be substituted.

(8) In section 337 for the words and bracketed words "the vehicle and horses (if any)" the words "such motor car or vehicle and the horses by which such vehicle is drawn" shall be substituted.

(9) In the First Schedule the first seven entries shall be omitted.

THE BIHAR AND ORISSA
 (The Second Schedule)
 [THE SECOND SCHEDULE]
 [See sub-section (7) of section 6]

[B. & O. Act

Description of motor vehicles	Annual rate of tax	
	For vehicles fitted entirely with pneumatic tyres	For other vehicles
1. Motor cycles—		
(a) Bicycles—		
(i) not exceeding 200 lbs. in weight unladen	30	40
(ii) exceeding 200 lbs. in weight unladen	40	50
(iii) if used for drawing a side car or trailer in addition to the tax payable under (i) and (ii)	10	10
	40	50
(b) Tricycles .....	...
2. Vehicles (including cycles with an attachment for propelling the same by mechanical power) not exceeding 5 cwt. in weight unladen, adapted and used for invalids	30	40
Vehicles (including tricycles weighing more than 8 cwt. unladen) constructed or adapted for use and used solely for the transport of goods in the course of trade—		
(i) not exceeding 1 ton in weight laden	200	300
(ii) exceeding 1 ton but not exceeding 1½ tons in weight laden	400	600
(iii) exceeding 1½ tons but not exceeding 2½ tons in weight laden	480	720
(iv) exceeding 2½ tons but not exceeding 3 tons in weight laden	600	900
(v) exceeding 3 tons but not exceeding 4½ tons in weight laden	720	1,080
(vi) exceeding 4½ tons but not exceeding 5½ tons in weight laden	880	1,320
(vii) exceeding 5½ tons but not exceeding 7½ tons in weight laden	1,080	1,620
(viii) exceeding 7½ tons but not exceeding 9 tons in weight laden	1,280	1,920
(ix) exceeding 9 tons in weight laden	1,400	2,100

1. Substituted by the B. and O. Motor Vehicles Taxation (Orissa Amendment) Act, 1949.

(The Second Schedule)

Description of motor vehicles	Annual rate of tax	
	For vehicles fitted entirely with pneumatic tyres	For other vehicles
(x) additional tax payable in respect of goods vehicles used for drawing trailers—		
(a) for each trailer not exceeding 20 cwt. in weight laden	80	120
(b) for each trailer exceeding 20 cwt. but not exceeding 60 cwt. in weight laden ...	300	450
(c) for each trailer exceeding 60 cwt. in weight laden	600	900
Provided that two or more goods vehicles shall not be chargeable under this in respect of the same trailer.		
Explanation—A vehicle shall not be deemed to be used otherwise than solely for transport of goods in the course of trade because it is used to convey employes of the trader in the course of their employment.		
for vehicles plying for hire and used for conveyance of passengers, including motor cabs—		
(i) for seating not more than five persons ...	320	480
(ii) for seating more than five persons for every person which the vehicle is permitted to carry excluding the driver and the conductor ...	80	120
for vehicles not themselves constructed to carry load (other than water, fuel, accumulators and equipment used for the purpose of propulsion, tools and loose equipment) used for haulage and weighing together with the largest number of trailers proposed to be drawn—		
(i) not more than 80 cwt. laden	200	300
(ii) more than 80 cwt. but not more than 120 cwt. laden	480	720
(iii) more than 120 cwt. laden	1,080	1,620

(The Second Schedule)

Description of motor vehicles	Annual rate of tax	
	For vehicles fitted entirely with pneumatic tyres	For other vehicles
	Rs.	Rs.
6. Motor vehicles other than those liable to tax under the foregoing provisions of this schedule—		
(i) weighing not more than 15 cwt. unladen ...	70	100
(ii) weighing more than 15 cwt. but not more than 30 cwt. unladen	100	150
(iii) weighing more than 30 cwt. but not more than 45 cwt. unladen	130	200
(iv) weighing more than 45 cwt. but not more than 60 cwt. unladen	160	240
(v) weighing more than 60 cwt. unladen ...	200	300
(vi) additional tax payable in respect of such vehicles used for drawing trailers—		
(a) having such trailer not exceeding 1 ton in weight unladen	40	60
(b) for each trailer 1 ton in weight unladen ...	80	120

Provided that two or more vehicles shall not be chargeable under this clause in respect of the same trailer.]

BIHAR AND ORISSA ACT I OF 1934

THE BIHAR AND ORISSA NATURAL CALAMITIES LOANS ACT, 1934

CONTENTS

SECTIONS

1. Short title and extent
2. Definitions
3. Applications for loans
4. Power of Collector to grant loans
5. Orders granting loans conclusive on certain points
6. Duty of borrowers to comply with conditions of loans and rules and effect of non-compliance.
7. Repayment of loans
8. Recovery of loans
9. Power of Provincial Government to make rules
10. Certain Acts not to apply

BIHAR AND ORISSA ACT I OF 1934

THE BIHAR AND ORISSA NATURAL CALAMITIES LOANS ACT, 1934) (21st March, 1934)

An Act to enable the Local Government to grant loans to the owners of buildings which have been damaged or destroyed by earthquakes or other natural calamities

WHEREAS it is expedient to enable the [Provincial Government]¹ to grant loans for building to the owners of buildings which have been damaged or destroyed by earthquakes or other natural calamities ;

AND WHEREAS the previous sanction of the Governor-General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bihar and Orissa Natural Short title
Calamities Loans Act, 1934. and extent.

(2) It shall extend to the whole of the Province of Bihar and Orissa.

2. In this Act, unless there is anything repugnant in the subject Definitions.
or context,—

(a) "affected owner" means the owner of a building which has been damaged or destroyed by an earthquake or other natural calamity ;

(b) "Collector" means the Collector of a district or any officer empowered by the [Provincial Government]² to discharge, in any specified area, the functions of a Collector under this Act ; and

(c) "prescribed" means prescribed by rules made under this Act.

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Bihar and Orissa Gazette, 1934, Extraordinary dated 12-2-1934, p 8; for Proceedings in Council, see Bihar and Orissa Legislative Council Debates, 1934, Vol. XXX, pp. 12, 257-290.

2. Substituted by the A. O for "L. G."

(Secs. 3-7)

Applications
or loans.

3) An affected owner who desires to obtain a loan under this Act shall submit an application in the prescribed form and manner to the Collector.

owner of
Collector to
rant loans.

4. On receipt of an application under section 3 and after proceeding in the prescribed manner, the Collector may, subject to the prescribed restrictions, grant a loan to the applicant if the Collector is satisfied that the applicant is an affected owner.

orders
granting
ans
inclusive
certain
limits.

5. (1) When the Collector grants a loan to an affected owner, the Collector shall sign an order granting such loan in the prescribed form and containing the prescribed particulars and conditions, and such order shall, when signed, marked or sealed by such affected owner, be conclusive evidence that the loan the particulars and conditions of which are stated in the said order has been granted to such owner.

(2) If any person signs such order as surety for the borrower, such order shall be conclusive evidence that the person so signing as surety has agreed to be a surety for the repayment of the loan the particulars and conditions of which are stated in the said order and that such person has agreed to give as security for the repayment of the said loan any security stated in the said order to be given by him.

ity of
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compliance.

6. (1) An affected owner to whom a loan has been granted under this Act shall be bound to comply with the conditions of such loan and with any rules made under this Act.

(2) If an affected owner fails to comply with any such condition or commits a breach of any rule made under this Act, other than a condition or a rule requiring repayment of a loan or any portion thereof on a fixed date, the Collector may, after such notice as may be prescribed, record an order stating that such non-compliance or breach has occurred, and the loan granted to such affected owner or, in the case of a loan granted in instalments, such portion as has already been advanced, shall be repayable with all interest and the prescribed charges on the date of the order, and the Collector shall not, in the case of a loan granted in instalments, advance any further instalments to such affected owner after the date of the said order.

(3) An order of the Collector under sub-section (2) shall be final and shall not be questioned in any Civil, Criminal or Revenue Court.

payments

7. (1) Every loan granted under this Act together with the and the prescribed charges shall be repayable by the pres instalments and within the prescribed period.

(Secs. 8-9)

(2) If an affected owner fails to pay any instalment of a loan or the interest or the prescribed charges on the date on which such instalment, interest or charges are due, the Collector may, if he is satisfied that there is no adequate reason for the delay, order that the whole of such loan together with all interest and the prescribed charges shall become repayable on a date to be specified in such order, and such loan, interest and charges shall thereupon be repayable on the date so specified.

8. (1) Every loan granted under this Act together with the interest and the prescribed charges shall be the first charge on any building erected or repaired with the aid of such loan and on any interest held by the borrower in the land on which such building is erected, or on which such repaired building stands, and such loan together with the interest and the prescribed charges shall, when it becomes repayable, be recoverable by the Collector—

Recovery
of loans-

- (a) from the borrower—as if it were an arrear of land revenue due by him;
- (b) from his surety (if any)—as if it were an arrear of land revenue due by him;
- (c) out of any building erected or repaired with the aid of such loan and any interest held by the borrower in the land on which such building is erected or on which such repaired building stands—according to the procedure for the realization of land revenue by the sale of immoveable property other than the land on which that revenue is due;
- (d) out of the property comprised in the collateral security (if any)—according to the procedure for the realization of land revenue by the sale of immoveable property other than the land on which that revenue is due.

(2) If an affected owner to whom a loan has been granted under this Act transfers to any person any building erected or repaired with the aid of such loan or any interest in the land on which such building is erected, or on which such repaired building stands, the loan or any portion thereof together with the interest and the addition to the same from the transferee to the Collector.

9. The [Provincial Government]¹ may make rules to provide for the following matters—

- (a) the form of applications for loans and the manner in which such applications shall be made;

Power of
Provincial
Govern-
ment to
make rules.

¹ Substituted by the A. O. for "L. G."

(Sec. 10)

- (b) the procedure to be followed by the Collector before granting any loan under this Act;
- (c) the restrictions subject to which loans may be granted under this Act and the conditions of such loans;
- (d) " affected owners for the inspection of repaired or being erected of a loan granted to them under this Act;
- (e) the nature of the buildings to be erected in any area with the aid of a loan granted under this Act by borrowers or any class of borrowers;
- (f) the charges to be paid by borrowers in respect of any expenses incurred by the Collector in granting loans under this Act;
- (g) the instalments by which and the period in which loans granted under this Act and the interest and the charges due on such loans shall be paid;
- (h) the payment of additional interest on any portion of a loan or any instalment which is not paid on the due date; and
- (i) generally to carry out the purposes of this Act.

certain Acts
not apply:

10. Nothing in the Indian Stamp Act, 1899, or in the Indian Registration Act, 1908, shall apply to any loan granted or charge created, under or by this Act.

[L of 1899
XVI of 1908]

BIHAR AND ORISSA ACT III OF 1934

THE INDIAN FOREST (BIHAR AND ORISSA AMENDMENT) ACT, 1934

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- 2. Amendment of section 2 of the Indian Forest Act, 1927**
- 3. Validation of past action**

BIHAR AND ORISSA ACT III OF 1931

[THE INDIAN FOREST (BIHAR AND ORISSA AMENDMENT) ACT, 1931]
(21st October, 1931)

An Act to amend the Indian Forest Act, 1927

WHEREAS it is expedient to amend the Indian Forest Act, 1927, in its application to Bihar and Orissa in the manner hereinafter appearing;

It is hereby enacted as follows :—

1. This Act may be called the Indian Forest (Bihar and Orissa Amendment) Act, 1931. Short title.

2. For clause (4A) of section 2 of the Indian Forest Act, 1927,² the following shall be substituted, namely :— Amendment of section 2 of the Indian Forest Act, 1927.

"(4A) 'owner' includes—

IX (1) the Court of Wards constituted under the Court of Wards Act, 1879³, or the Central Provinces Court of Wards Act, 1899⁴, in respect of any property under the superintendence or charge of either of such Courts;

(2) a Manager appointed under section 2 of the Chota Nagpur Encumbered Estates Act, 1876, in respect of any property, the management of which is vested in such Manager."

3. Any action taken by the [Provincial Government]⁵ before the commencement of this Act on an application made by the Court of Wards constituted under the Court of Wards Act, 1879³, or the Central Provinces Court of Wards Act, 1899⁴, or by a Manager of an encumbered estate, which would have been valid if this Act had been passed before such action had been taken, shall be valid and shall have the same effect as if this Act had been passed before such action was taken. Validation of past action.

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Bihar and Orissa Gazette, 1935, Pt. V, p. 3; for Proceedings in Council, see the Bihar and Orissa Legislative Council Debates, 1934, Vol. XXXI, p. 296.

2. Printed in Central Acts, Vol. VIII, p. 353.

3. Repealed by the Orissa Court of Wards Act, 1947 (Orissa Act XXVI of 1947). Reference should now, therefore, be made to the said Act.

4. Substituted by the A. O. for "L. G."

BIHAR AND ORISSA ACT VI OF 1935
THE BIHAR AND ORISSA CO-OPERATIVE SOCIETIES ACT, 1935

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BIHAR AND ORISSA ACT VI OF 1935

(THE BIHAR AND ORISSA CO-OPERATIVE SOCIETIES ACT, 1935)¹

(29th May, 1935)

An Act to consolidate and amend the law relating to Co-operative Societies in the Province of Bihar and Orissa

WHEREAS it is expedient to facilitate the formation, working and consolidation of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common needs, and for that purpose to consolidate and amend the law relating to co-operative societies in the Province of Bihar and Orissa;

AND WHEREAS the previous sanction of the Governor-General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Bihar and Orissa Co-operative Societies Act, 1935. Short title
and extent.

(2) It extends to the whole of the Province of Bihar and Orissa, including the Santal Parganas.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) 'by-laws' means the registered by-laws for the time being in force, and includes a registered amendment of the by-laws;

(b) 'Co-operative Federation' means a registered society, the main object of which is to co-ordinate and facilitate the activities of other registered societies and to foster the growth of the Co-operative movement;

1. LEGISLATIVE PARTIES.—For Statement of Objects and Reasons, see the

LOCAL EXTENT.—This Act has been extended to the areas transferred to 1936 (Orissa

1 and Khond-
s. 3 (2), and
of 1936), s. 3

(2) and Sch.

(Sects. 3-5)

(c) 'financing bank' means a registered society the main object of which is to lend money to other registered societies;

(d) 'liquidator' means a person or persons appointed by the Registrar under sub-section (1) of section 44 to wind up the affairs of a registered society;

(e) 'managing committee' or other body to whom the society is entrusted [and s and 66 any person or persons appointed by the Registrar or deemed to be so appointed under section 41A]¹;

(f) 'member' includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the rules and the by-laws of such society,

(g) 'officer' includes a chairman, secretary, treasurer, member of a managing committee or any other person empowered by or under this Act, or the rules or the by-laws of a registered society to give directions in regard to the business of the society;

(h) 'registered society' means a society registered or deemed to be registered under this Act;

(i) 'Registrar' means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act; and

(j) 'rules' means rules made under this Act.

3. The provisions of the Indian Companies Act, 1913, shall not apply to registered societies. VII of 1913

4. (1) Every society now existing which has been registered under the Co-operative Credit Societies Act, 1904, or under the Co-operative Societies Act, 1912, shall be deemed to be registered under this Act, and its by-laws shall, so far as they are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded. X of 1913
II of 1912

(2) All appointments, rules and orders made, notifications and notices issued, all transactions entered into and suits and other proceedings instituted under the said Acts, shall be deemed, so far as may be, to have been respectively made, issued, entered into and instituted under this Act.

5. All references to the Co-operative Societies Act, 1912, II of 1912 occurring in any enactment made by any authority in [all the Provinces of India]² and for the time being in force in the Province of Bihar and Orissa, shall, in the application of any such enactment to the said Province, be construed as references to this Act.

1. Inserted by the B. and O. Co-operative Societies (Orissa Amending and Validating) Act, 1912 (Orissa Act II of 1912), s. 2.

2. Substituted by the I. O. for "B. I."

(Secs. 6-7)

CHAPTER II

REGISTRATION OF SOCIETIES

6. (1) The [Provincial Government]¹ may appoint² a person to be Registrar of Co-operative Societies for the Province of Bihar and Orissa or any portion of it, and may appoint persons to assist such Registrar.

(2) The [Provincial Government]¹ may, by general or special order published in the [Official Gazette]³ confer,—

(a) on any person appointed under sub-section (1) to assist the Registrar, all or any of the powers of the Registrar under this Act except the powers under section 26, section 40, section 41, sub-section (5) of section 44, sub-section (3) of section 47 and sub-sections (6) and (8) of section 48, and

(b) or financing bank, all or any of the under section 20, sub-section (3) of sect....

7. (1) Subject to the provisions of this Act, a society which has as its object the promotion of the common interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability :

Provided that, unless the [Provincial Government]¹ by general or special order otherwise directs—

(a) the liability of a society of which a member is a registered society shall be limited ; and

(b) object is the creation of the majority of the members of the society, the member is a registered society, shall be unlimited.

(2) Where the liability of a society is limited, the liability of each member, past member, or the estate of a deceased member shall, on liquidation, be limited to the amount, if any, unpaid on the shares held by such member, or where the liability is limited by guarantee, to the amount of such guarantee, or where it is limited in any other manner, then as may be determined by the rules or by-laws, subject, however, to the provisions of section 32.

The Registrar

Societies
which may
be registered

1. Substituted by the A. O. for "L. G."

2. For notifications issued under this section, see Orissa L. S. R. & O. Vol. I Pt. VII.

3. Substituted by the A. O. for "Gazette".

(Secs. 8-11)

(3) Where the liability of a society is unlimited, all members, past members and the estates of deceased members shall, on liquidation, be jointly and severally liable for and in respect of all its obligations, subject, however, to the provisions of section 32.

^{Conditions of registration.} 8. (1) No society, other than a society of which a 'member' is a registered society, shall be registered under this Act which does not consist of at least ten persons above the age of eighteen years and, where the primary object of the society is the creation of funds to be lent to its members, unless such persons—

(a) reside in the same town or village or in the same group of villages; or,

(b) save where the Registrar otherwise directs, are members of the same tribe, class or occupation.

(2) The word 'limited' shall be the last word in the name of every society with limited liability registered under this Act.

^{Application for registration.} 9. (1) An application for the registration of a society shall be made to the Registrar, and shall be accompanied by a copy of the proposed by-laws of the society; and the persons by whom or on whose behalf such application is made shall furnish such information, in regard to the society as the Registrar may require.

(2) The application shall be signed—

(a) if none of the applicants is a registered society, by at least ten persons qualified in accordance with the requirements of sub-section (1) of section 8; and

(b) if any of the applicants is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies, by ten other members or, where there are less than ten other members, by all of them.

^{Power of Registrar to decide certain questions.} 10. When any question arises whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a particular town or village or group of villages, the Registrar shall make a decision in writing, and such decision shall be final.

^{Registration.} 11. (1) If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by-laws are not contrary to this Act or to the rules, he may, if he thinks fit, register the society and its by-laws.

(2) If the Registrar refuses to register a society, he shall record his reasons for such refusal.

(Secs. 12-16)

(3) An appeal shall lie to the [Provincial Government]¹ from an order of the Registrar refusing to register a society, within two months from the date of the receipt of the order by at least one of the applicants.

12. A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

Evidence of registration.

CHAPTER III

INCORPORATION, DUTIES AND PRIVILEGES OF REGISTERED SOCIETIES

13. The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to acquire and hold property to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted.

Societies to be bodies corporate.

14. (1) Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send notice, in writing, to the Registrar and to the financing bank, if any, of which it is a shareholder and to the Co-operative Federation, if any, of which it is a member, of any change in the said address within fifteen days of such change.

Registered society to have a managing committee, etc.

(2) The management of a registered society shall be vested in a managing committee * * * * *,²

(3) Every registered society shall keep open to inspection free of charge at all reasonable times at its registered address—

- (a) a copy of this Act,
- (b) a copy of the rules governing such society,
- (c) a copy of the by-laws of such society, and
- (d) a register of its members.

15. A registered society shall receive deposits and loans from members and non-members only to such extent and under such conditions as may be prescribed by the rules or by-laws.

Restrictions on borrowing.

16. (1) Except with the general or special sanction of the Registrar and subject to such restrictions as he may impose, a registered society shall not—

Restrictions on lending.

- (a) make a loan to any person other than a member, or

1. Substituted by the A. O. for "L. G."

2. The words "constituted in accordance with the rules" omitted by the B. and O. C. Co-operative Societies (Orissa Amending and Validating) Act, 1942 (Orissa Act II of 1942), s. 3.

(Sects. 17-20)

(b) lend money on the security of moveable property.

(2) The [Provincial Government]¹ may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any registered society or class of registered societies.

Restrictions
on other
transactions
with non-
members

17. The transactions of a registered society with persons other than members shall be subject to such further prohibitions and restrictions, if any, as the [Provincial Government]¹ may by rules prescribe.

Reserve
fund.

18. (1) At least thirty-five per cent. of the net profits of a registered society shall each year be carried to a reserve fund, provided that the [Provincial Government]¹ may by rule increase or decrease this proportion for any society or class of societies.

(2) The reserve fund shall not be used in the business of the society except to such extent and in such manner as may be prescribed by the rules.

(3) Any portion of the reserve fund not used in the business of the society shall be invested or deposited in one or more of the ways specified in section 19 subject to such rules as the [Provincial Government]¹ may make in this behalf.

Investment
of funds.

19. Subject to the provisions of sub-section (2) of section 16, a registered society may invest or deposit its funds—

(a) in a Government Savings Bank; or

(b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882; or

(c) with the general or special sanction of the Registrar and on such conditions as he may impose—

(i) in the shares or on the security of any other registered society; or

(ii) with any bank or person carrying on the business of banking approved for this purpose by the Registrar; or

(d) in any other mode permitted by the rules.

contribution
to charita-
ble purpose.

20. Any registered society may, after the amount required by sub-section (1) of section 18 or by any rule has been carried to the reserve fund, contribute an amount not exceeding ten per cent. of the net profits to any charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1890:

II of 1

VI of 15

1. Substituted by the A. O. for "L. G."

(Secs. 21-23)

Provided that the Registrar may, by general or special order, prohibit any society or class of societies from making any contribution under this section.

21. No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members :

Restrictions
on division
of funds

Provided that after the amount required by sub-section (1) of section 18 or by any rule has been carried to the reserve fund, the balance of the net profits, if any, together with any available profits of past years, may be distributed as dividend among members or paid as bonus or remuneration to a member for any specific service rendered to the society or used for the common benefit of members to such extent and under such conditions as may be prescribed by the rules or by-laws.

22. A registered society shall have a charge upon the share or interest in the capital and on the deposits or contribution of a member, past member or deceased member and upon any amount payable out of profits to a member or past member or to the estate of a deceased member in respect of any debt due from such member, past member or the estate of such deceased member to the society, and may set off any sum credited or payable to a member, past member or the estate of a deceased member in or towards payment of any such debt.

Charge and
set-off in
respect of
shares or
interest of
member.

23. Subject to any claim of the [Crown]¹ in respect of land-revenue or any money recoverable as land revenue or as a public demand or any claim of a landlord in respect of rent or any money recoverable as rent, any debt or outstanding demand due to a registered society from any member, past member or the estate of a deceased member, shall be a first charge,—

Prior claim
of society.

(a) if the demand is due in respect of the supply of, or any loan granted for the purchase of, seed or manure—upon the crops or other agricultural produce of such member, or past member or belonging to the estate of such deceased member, at any time within two years from the date on which the last instalment of such supply or loan shall become repayable;

(b) if the demand is due in respect of the supply of, or of any loan granted for the purchase of, cattle, fodder for cattle, agricultural or industrial implements or machinery or raw materials for manufacture—upon any cattle or things so supplied, or purchased, in whole or in part, from any such loan or upon any articles manufactured from raw materials so supplied or purchased.

(Secs. 24-24-A)

Transfer of
interest on
death of
member.

24. (1) A registered society may, on the death of a member, transfer his share or interest in the capital of the society to the person nominated in accordance with the rules or, if there is no person so nominated, to such person as may appear to the society or managing committee to be the heir or legal representative of the deceased member, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws:

Provided that—

(i) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid, after deducting the amount of any charge existing under section 22;

(ii) in the case of a society with limited liability, the society shall transfer, subject to any charge existing under section 22, the share or interest of the deceased member to such nominee, heir or legal representative as the case may be, being qualified in accordance with the rules and by-laws for membership of the society, or, on his application within three months of the death of the deceased member, to any person specified in the application who is so qualified:

Provided further that no payment of a sum in excess of rupees one hundred shall be made to any such heir or, legal representative who has not been nominated in accordance with the rules, until the expiry of six months from the date of the death of the member or until after the decision under section 48 of any claim, which may, within that period, be made by any other person.

(2) Subject as aforesaid, a registered society may pay all other money due to a deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

Power of
Registrar to
sanction
compromise
between a
registered
society and
its creditors.

..... contained in this Act,
..... registered
..... or may, on
the application in a summary way of the society or of any creditor
or, in the case of a society in respect of which an order of winding

I. Inserted by the B. and O. Co-operative Societies (Amendment) Act, 1935, (B. & O. Act VIII of 1935), s. 2.

(Secs. 25-26)

up has been passed, of the liquidator, order a meeting of the creditors or class of creditors, as the case may be, to be called, held and conducted in such manner as may be prescribed by rules.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by an order of the Registrar, be binding on all the creditors or the class of creditors, as the case may be, and also on the society, or, in the case of a society in respect of which an order of winding up has been passed, on the liquidator and on all persons who have been, or may be, required by the liquidator acting under clause (c) of sub-section (3) of section 44 to contribute to the assets of the society.

(3) An appeal shall lie to the District Judge from an order of the Registrar under sub-section (2) within two months from the date of the publication of the order in the [official Gazette]. The order of the District Judge on appeal and, subject to the result of such appeal, if any, the order of the Registrar shall be final.

(4) The order of the Registrar calling a meeting of creditors or class of creditors, as the case may be, under sub-section (1) and the order of the Registrar sanctioning a compromise or arrangement under sub-section (2) shall be published in the [Official Gazette].

25. (1) No amendment of the by-laws of a registered society shall be valid until the amendment has been registered under this Act.

(2) If the Registrar is satisfied that an amendment of the by-laws is not contrary to this Act or to the rules, he may register the amendment.

(3) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the amendment has been duly registered.

or ~~any~~ ^{any} order to the Registrar that an amendment of
any or desirable in the
writing to be issued to
the society by registered post, require the society to make the amend-
ment within such time as he may specify in such order.

(2) If any society fails to make any such amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard, register such amendment, and issue to the society by registered post a copy of the amendment certified by -

**Amendment
of the by-
laws of
registered
society.**

**Power of
Registrar
to direct
amendment
of by-
laws of
registered
society.**

1. Substituted by the A. O. for "Gazette".

(Secs 27-30)

him, which shall be conclusive evidence that the amendment has been duly registered, and such amendment shall be binding on the members of such society.

(3) An appeal shall lie to the [Provincial Government]¹ from any order of the Registrar passed under sub-section (2) within two months from the date of the issue of such order. The order of the [Provincial Government]¹ on appeal and, subject to the result of such appeal, if any, the decision of the Registrar shall be final.

CHAPTER IV

RIGHTS AND LIABILITIES OF MEMBERS OF REGISTERED SOCIETIES

Member not
to exercise
rights till
due pay-
ment made.

27. No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the rules or by-laws.

Votes of
members.

28. (1) Subject to the provisions of sub-section (2), each member of a registered society shall have one vote only as a member in the affairs of the society, provided that in the case of an equality of votes the chairman shall have a casting vote.

(2) A registered society which is a member of any other registered society shall have as many votes as may be prescribed by the by-laws of such other society, and may, subject to such by-laws, appoint any number of its members, not exceeding the number of such votes, to exercise its voting power, provided that no member who is disqualified for such appointment under any rule shall be so appointed.

(3) Save as provided in sub-section (2), voting by proxy shall not be allowed except with the general or special sanction of the Registrar for any society or class of societies.

Restriction
on holding
of members.

29. No member of a registered society, other than another registered society, shall have or claim any interest in the capital of a registered society exceeding one fifth of the total capital or such smaller proportion as may be prescribed by the rules.

Share or
interest not
liable to
attachment.

30. Subject to the provisions of section 22, the share or interest of a member in the capital of, or contribution to, a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909, nor a Receiver under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on, such share, interest or contribution.

¹ Substituted by the A. O. for "L. G."

(Secs. 31-33)

31. (1) The transfer or charge of the share or interest of a member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules.

Restrictions
on transfer
of share or
interest

(2) In case of a society registered with unlimited liability, a member shall not transfer any share held by him or his interest in the capital or property of the society or any part thereof unless—

(a) he has held such share or interest for not less than one year; and

member has or to a membership

32. The liability of a past member or of the estate of a deceased member for the debts of a registered society as they existed on the date of his ceasing to be a member or of his decease, as the case may be, shall continue for a period of two years from such date.

Liability of
past
member and
of estate
of deceased
member.

CHAPTER V

AUDIT AND INSPECTION

33. (1) The Registrar shall audit or cause to be audited by some person (hereinafter referred to as the auditor) authorised by him by general or special order in writing in this behalf, the accounts of every registered society once at least in every year.

Audit.

(2) Every officer or member of the society shall furnish such information in regard to the transactions and working of the society as the Registrar or the auditor may require.

(3) The audit under sub-section (1) shall be conducted according to the rules, and shall include an examination of overdue debts, if any, the verification of the cash balance and securities and a valuation of the assets and liabilities of the society.

(4) The auditor shall submit a report on such examination, verification and valuation, and shall include in his report a statement of—

(a) every transaction which appears to the auditor, to be contrary to law or to the rules or by-laws of the society;

(b) the amount of any deficiency or loss which appears to have been incurred by the culpable negligence or misconduct of any person;

(c) the amount of any sum which ought to have been but has not been brought into account by any person; and

(Secs. 34-36)

(d) any money or property belonging to the society which has been misappropriated or fraudulently retained by any person taking part in the organization or management of the society or by any past or present officer of the society or by any other person.

(5) The Registrar may determine the sum to be paid by any society towards the cost of auditing its accounts under this section, and such sum shall be paid by the society in such manner as the Registrar may direct.

Inspection by Registrar

34. The Registrar may from time to time inspect a registered society himself or cause it to be inspected by some person authorised by him in this behalf by general or special order.

Inquiry by Registrar

35. (1) The Registrar may, of his own motion, and shall, on the request of the Collector, or on the application of a majority of the managing committee or of not less than one-third of the members, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry, into the constitution, working and financial condition of a registered society.

(2) The Registrar or the person authorised by him under sub-section (1) may—

(a) require an officer of the society to call a general meeting at such time and place at the headquarters of the society, and require the society to take into consideration such matters, as he may direct, and

(b) if the officer of the society refuses or fails to call such a meeting or if there be no quorum at a meeting so convened, call such meeting himself by giving notice to the members in such a way as he may consider reasonable, notwithstanding any rules or by-laws prescribing the period of notice for calling a general meeting of the society. Any meeting so convened by the Registrar or the person authorised by him under sub-section (1) shall have all the powers of a general meeting convened under the by-laws of the society.

(3) When an inquiry is made under this section, the Registrar shall inform the inquiry to the society, the name of the society is affiliated and to the instance the inquiry is made.

Inspection by Registrar

36. (1) The Registrar may, on the application of a creditor of a registered society, inspect, or direct some person authorised by him in this behalf by order in writing to inspect, the books of the society.

(Secs. 37-39)

(2) No inspection shall be made or directed under sub-section (1) unless the applicant—

(a) satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(3) Where an inspection is made under sub-section (1), the Registrar shall communicate the results of such inspection to the creditor, to the society, and to the financing bank, if any, to which the society is affiliated.

37. (1) A financing bank may cause an inspection to be made of the books of any registered society which is affiliated to it, and may direct such society to furnish such information, statements and returns as may be required.

Inspection
of books by
financing
bank.

(2) An inspection under sub-section (1) may be made by any of the officers of the financing bank or by any member of its paid staff approved by the Registrar by general or special order.

(3) The financing bank shall communicate the result of such inspection to the Registrar and to the society concerned.

38. The Registrar or any person authorised to audit the accounts of a society under section 33 or to make an inspection or to hold an inquiry under section 34, 35, 36 or 37—

Power to
call for
documents
and to issue
summons.

(a) shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society, and may summon any person in possession of or responsible for the custody of any such books, accounts, documents, securities, cash or other properties, to produce the same at the office of the society or at any branch thereof or, except in the case of a financing bank, at any place at its headquarters; and

(b) may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society to appear before him at the office of the society or at any branch thereof or, except in the case of a financing bank, at any place at its headquarters, and may examine such person on oath.

39. Where an inquiry is held under section 35, or an inspection is made under section 36, the Registrar may, after giving the parties an opportunity of being heard and after recording the reasons, apportion the costs of such inquiry or inspection, or such part of the costs as he may think fit, between the society, the members or creditor demanding an inquiry or inspection and the officers or former officers of the society.

Costs of
inquiry and
inspection.

THE BIHAR AND ORISSA

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(Sec. 40)

Surcharge.

40 (1) Where as the result of an audit under section 33 or an inquiry under section 35, or an inspection under section 34, section 36 or section 37 or the winding up of a society, it appears to the Registrar that any person who has taken part in the organization or management of the society or any past or present officer of the society has—

(a) made any payment which is contrary to law or to the rules or by-laws of the society, or

(b) by reason of his culpable negligence or misconduct involved the society in any loss or deficiency, or

(c) failed to bring into account any sum which ought to have been brought into account, or

(d) misappropriated or fraudulently retained any property of the society.

the Registrar may inquire into the conduct of such person or officer, and, after giving such person or officer an opportunity of being heard, make an order requiring him to contribute such sum to the assets of the society by way of compensation in respect of such payment or loss or sum, or to restore such property as the Registrar thinks fit, together with such sum as the Registrar may fix to meet the cost of the proceedings under this section :

Provided that, before any order requiring such person or officer to contribute is passed in respect of a payment referred to in clause (a), reasonable time shall be given to such person or officer to recover the amount of such payment from the payee and credit it to the funds of the society :

Provided further that no order shall be passed under this section in respect of any act or omission mentioned in clause (a), (b), (c) or (d) except within four years of the date on which such act or omission occurred:

(2) This section shall apply notwithstanding that such person or officer may have incurred criminal liability under this Act or under any other law.

(3) An appeal shall lie from an order of the Registrar under sub-section (1) to the [Provincial Government]¹ on application made by the person or officer against whom such order was passed within three months from the date of the communication to him of such order. The order of the [Provincial Government]¹ on appeal, and of such order, the result of such appeal, if any, the order of the Registrar, shall be final.

1. Substituted by the A. O. for "L. G".

(Sec. 41)

CHAPTER VI

**SUPERSession OF MANAGING COMMITTEES AND DISSOLUTION
OF REGISTERED SOCIETIES**

41. (1) If, in the opinion of the Registrar, the managing committee of any registered society is mismanaging the affairs of the society, he may, by order in writing, after giving the managing committee an opportunity to state its objections, if any, [if he does not proceed under section 41A]¹ dissolve the managing committee and order that all or any of its members shall be disqualified from being elected to the managing committee of the society for a period to be specified in the order not exceeding three years :

Supersession of managing committee

Provided that the Registrar may from time to time extend the period specified in such order for further periods not exceeding one year at a time, and not exceeding in the aggregate, two years.

Every order of the Registrar under this sub-section shall state the reasons for which it is made and shall be communicated by registered post to the registered society concerned.

(2) When a managing committee is dissolved under sub-section (1), the society shall elect a fresh managing committee:

Provided that, so long as an order under sub-section (1) remains in force, no member shall hold office except with the approval of the Registrar.

(3) If the society fails or refuses to elect a fresh managing committee under sub-section (2), the Registrar may—

(a) require an officer of the society to call a general meeting at such time and place at the headquarters of the society, and require the society to take into consideration such matters, as he may direct, and

1. Inserted by the B. and O. Co-operative Societies (Orissa Amendment and Validating) Act, 1942 (Orissa Act II of 1942), s. 4 (1).

(Sec. 41-A)

(4) Nothing in this section [or in section 41A]¹ shall be deemed to affect the powers of the Registrar to order the winding up of a society under section 42 or to cancel the registration of the society under sub-section (3) of section 44.

(5) An appeal shall lie from an order of the Registrar under sub-section (1) to the [Provincial Government]² on application made by any member of the managing committee within three months from the date of communication of the order to the registered society concerned. The order of the [Provincial Government]² on appeal, and subject to the result of such appeal, if any, the order of the registrar, shall be final.

Dissolution
of managing
committee.

[41 A. (1) If, in the opinion of the Registrar, the managing committee of any registered society is mismanaging the affairs of the society, or if any registered society at a general meeting resolves that the managing committee be superseded, the Registrar may by order in writing, after giving the managing committee an opportunity to state its objections, if any, dissolve the managing committee and appoint a suitable person or persons to manage the affairs of the society for a specified period not exceeding three years. The period specified in such order may at the discretion of the Registrar be extended from time to time, provided that such order shall not remain in force for more than [twelve]³ years in the aggregate.

(2) The person or persons so appointed shall, subject to the control of the Registrar, and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the managing committee or of any officer of the society, and to take such action as may be required in the interests of the society.

(3) The Registrar may fix the remuneration payable to the person or persons so appointed. The amount of such remuneration and the other costs, if any, incurred in the management of the society, shall be payable from its funds.

(4) The person or persons so appointed shall, at the expiry of the period of his or their appointment, arrange for the constitution of a new managing committee in accordance with the by-laws of the society :

1. Inserted by the B. and O. Co-operative Societies (Orissa Amending and Validating) Act, 1912 (Orissa Act II of 1912), s. 4 (2).

2. Substituted by the A. O for "L. G".

3. Inserted by the B. and O. Co-operative Societies (Orissa Amending and Validating) Act, 1912 (Orissa Act II of 1912), s. 5.

4. Substituted by the B. and O. Co-operative Societies (Orissa Amendment) Act, 1917 (Orissa Act XII of 1917), s. 2 for "eight", which was substituted by the B. and O. Co-operative Societies (Orissa Amendment) Act, 1943 (Orissa Act III of 1943), s. 2 for "six".

(Sects. 42-44)

Provided that the Registrar may order that any member of the managing committee dissolved under sub-section (1) shall be disqualified from being elected to the managing committee of the society for a period to be specified in the order not exceeding three years.

(5) Before taking any action under sub-section (1) in respect of any registered society the Registrar shall consult its financing body, if any, regarding such action.]

42. The Registrar may, by notification, order a registered society to be wound up if—

Winding up
Order,

(a) after an inquiry has been held under section 35 or an inspection made under section 34, section 36 or section 37, or on receipt of an application made by three-fourths of the members of the society, or of his own motion, in the case of a society that has not commenced working or has ceased working, he is of opinion that the society ought to be dissolved, or

(b) it is a condition of the registration of the society that it should consist of at least ten members who have attained the age of eighteen years, and it is proved to the satisfaction of the Registrar that the number of the members has been reduced to less than ten.

43. (1) Any member of a society, in respect of which an order under section 42 has been passed may, within two months from the date of the publication of such order in the [Official Gazette]¹, appeal to the [Provincial Government]² from such order.

Appeal
against
order of
winding up.

(2) An order under section 42 shall not take effect until the order ss and

(3) The order of the [Provincial Government]² on appeal and, subject to the result of such appeal, if any, the order of the Registrar, shall be final.

44. (1) Where the Registrar has passed an order for the winding up of a registered society, he shall appoint a person or persons to be liquidator of the society.

Liquidation
and dissolu-
tion,

(2) Notwithstanding anything contained in sub-section (2) of section 43, a liquidator on appointment shall have power to take immediate possession of all assets belonging to the society and all

1. Substituted by the A. O. for "Gazette".

2. Substituted by ibid for "L. G."

(Sec. 44)

books, records and other documents pertaining to the business thereof and to carry on the business of the society so far as may be necessary, and all the rights, duties, assets and liabilities of the society shall be vested in and shall devolve upon the liquidator as such.

(3) Subject to the Registrar's power of control and revision, such liquidator shall also have power,

- (a) to institute and defend suits and other legal proceedings on behalf of the society by his name or office;
- (b) to determine and realize all sums due to the society from any person;
- (c) to determine from time to time subject to the provisions of section 32, the contribution to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officers, to time, to winding up is
- (d) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants after giving an opportunity of being heard to all the creditors;
- (e) to pay claims against the society (including interest up to the date of the publication in the [Official Gazette]¹ of the notification ordering the winding up of the society) according to their respective priorities, if any, in full or rateably as the assets of the society permit; and to apply the surplus, if any, remaining after payment of the claims in full, in payment of interest from the said date at a rate fixed by him but not exceeding in any case the rate agreed to be paid by the society;
- (f) to make any compromise or arrangement with persons between whom and the society there exists any dispute, or to refer any such dispute to arbitration;
- (g) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and
- (h) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society:

1. Substituted by the A. O. for "Gazette".

(Sec. 45)

Provided that the liquidator shall not determine the contribution, debt or assets to be recovered from any person unless an opportunity of being heard has been given to such person.

(4) If an appeal from the order of winding up is allowed by the [Provincial Government]¹ under section 43, the liquidator shall give up possession of the assets, books, records and other documents of the society to the managing committee, and shall cease to carry on the business of the society, provided that all his acts done in his capacity as liquidator shall continue to have legal validity as if they had been done by the managing committee or the society.

(5) With the special sanction of the Registrar, an appeal shall lie to the Court of the District Judge within three months from the date of communication by registered post of an order of a liquidator under clause (b), (c), (d), (e), (g) or (h) of sub-section (3) to the person concerned.

(6) The orders of the liquidator, subject to any order of the Registrar in revision or to any order of the District Judge on appeal, the orders of the Registrar in revision and the order of the District Judge on appeal, if any, shall be final.

(7) When the affairs of the society have been wound up, the liquidator shall deposit the records of the society in such place as the Registrar may direct.

(8) After the records of a society have been deposited under sub-section (7), the Registrar shall cancel the registration of the society, and the society shall then cease to exist as a corporate body.

CHAPTER VII

PENALTIES AND PROCEDURE

45. (1) It shall be an offence under this Act if—

Offences.

(a) an officer or member of a registered society intentionally neglects or refuses to do any act required to be done, or to furnish any information required to be furnished, by this Act or by any rule ; or

(b) an officer or member of a registered society wilfully makes a false return or furnishes false information.

(2) Any officer or member of a registered society guilty of an offence under sub-section (1) shall be punishable with fine which may extend to fifty rupees.

1. Substituted by the A. O. for "L. G."

(Sects. 46-48)

Prohibition
of use of
word 'co-
operative.'

46. (1) No person or society other than a registered society shall trade or carry on business under any name or title of which the word 'co-operative' is part without the sanction of the [Provincial Government]:

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which the Co-operative Societies Act, 1912, came into operation.

II of 1912

(2) Any officer or member of a society or any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to fifty rupees, and, in the case of a continuing offence, with a further fine of five rupees for each day on which the offence is continued after conviction therefor.

Cognizance
of offences.

47. (1) No Court inferior to that of a Magistrate of the second class shall try any offence under this Act.

(2) Every offence under this Act, shall, for the purposes of the Code of Criminal Procedure, 1898, be deemed to be non-cognizable.

V of 1898

(3) No prosecution for an offence under this Act shall be instituted without the previous sanction of the Registrar, and the Registrar shall not sanction the prosecution of any person unless he has given such person an opportunity of being heard.

Disputes.

48. (1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises—

(a) amongst members, past members, persons claiming through members, past members or deceased members, and sureties of members, past members or deceased members, whether such sureties are members or non-members ; or

(b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased members, whether such sureties are members or non-members, and the society, its managing committee or any officer, agent, or servant of the society ; or

(c) between the society or its managing committee and any past, or present officer, agent or servant of the society ; or

(d) between the society and any other registered society ; such dispute shall be referred to the Registrar :

1. Substituted by the A. O. for "L. G."

(Sec. 48)

Provided that no claim against a past member or the estate of a deceased member shall be treated as a dispute if the liability of the past member or of the estate of the deceased member has been extinguished by virtue of section 32 or section 63.

Explanation. —(1) A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member or from sureties of members, past members or deceased members, whether such sureties are members or non-members, shall be a dispute touching the business of the society within the meaning of this sub-section even in case such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment.

Explanation —(2) The question whether a person is or was a member of a registered society or not shall be a dispute within the meaning of this sub-section.

(2) The Registrar may on receipt of such reference—

- (a) decide the dispute himself, or
- (b) transfer it for disposal to any person exercising the powers of a Registrar in this behalf, or
- (c) subject to any rules, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to any rules, the Registrar may withdraw any reference transferred under clause (b) of sub-section (2) or referred under clause (c) of the said sub-section and deal with it in the manner provided in the said sub-section.

(4) The appointment of an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators shall be regulated by rules.

(5) In the case of a dispute involving property which is given as collateral security, it shall be competent to the person deciding such dispute to issue a mortgage award which shall have the same force as a mortgage decree of a competent Civil Court.

(6) Any person aggrieved by any decision given in a dispute transferred or referred under clause (b) or (c) of sub-section (2) may, within three months from the date of such decision, appeal to the Registrar.

(7) The Registrar, in the case of disputes under this section, shall have the power of review vested in a Civil Court under section 114 and under Order XLVII, rule I of the Code of Civil Procedure, 1908, and shall also have the inherent jurisdiction specified in section 151 of the said Code.

(Secs. 49-51)

(8) The Registrar may, where it appears to him advisable, either on application or of his own motion, state a case and refer it to the District Judge for decision, and the decision of the District Judge shall be final.

(9) Save as expressly provided in this section, a decision of the Registrar under this section, and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under clause (b) or (c) of sub-section (2), shall be final.

49. Subject to :
 to hold an inquiry
 36, any liquidator,
 or any arbitrator
 in so far as such powers are necessary for carrying out any purposes of this Act, have power to summon and enforce the attendance of witnesses and parties concerned and to examine them upon oath and to compel the production of any books, accounts, documents or property by the same means and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

V of 1908.

50. (1) Where the Registrar is satisfied on the application of the liquidator or of a society that any person with intent to defeat or delay the execution of any order that may be passed against him under section 44 or 48—

- (a) is about to dispose of the whole or any part of his property ; or
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Registrar,

the Registrar may, unless adequate security is furnished to his satisfaction, direct the attachment of the said property or such part thereof, as he thinks necessary, and such attachment shall have the same effect as if it had been made by a competent Court.

(2) An order of attachment passed under sub-section (1) shall, on the application of the Registrar, be executed by the Collector in whose jurisdiction the property lies, in the same manner as an order of a Revenue Court.

51. Orders passed under sections 44, 48 and 50 shall, in addition to any other method of enforcement provided under this Act, on application, be enforced as follows :—

- (a) when passed by the Registrar, a liquidator or by an arbitrator or arbitrators, by any Civil Court having local jurisdiction in the same manner as a decree of such Court :

enforce-
ment of
orders.

(Sects. 52-55)

(b) when passed by the District Judge, in the same manner as a decree of the District Judge made in any suit pending before him.

52. Any sum payable by any person or by any registered society—^{Recovery of sums due.}

(a) as fees for an audit held under section 33,

(b) in accordance with an order of the Registrar under section 39 apportioning the costs of an inquiry or inspection,

(c) in accordance with an order passed under section 40,

(d) in accordance with an order of the Registrar or of a liquidator passed under section 44, or

(e) in accordance with an order, decision or award passed or made under section 48,

shall be recoverable, as a public demand in any area, in which the Bihar and Orissa Public Demands Recovery Act, 1914, is in force, or as an arrear of land-revenue throughout the whole of the Province of Bihar and Orissa, and the Registrar or other person authorised by him in this behalf, shall be deemed to be the person to whom such public demand is due or to whom such arrear of land-revenue is payable.

53. All sums due from a registered society or from an officer or member, past or present, or from his sureties or from the estate of a deceased member of a registered society or from his sureties as such to the [Crown]¹, including any costs awarded to the [Crown]¹ may be recovered in the same manner as arrears of land-revenue.^{Recovery of sums due to Crown.}

54. All sums due from a registered society to the Crown¹ and section 33, 39, of the society; e members of or estates of deceased members or their sureties subject to the limit of their liability; and thirdly, in the case of other societies, from the members, past members or estates of deceased members or their sureties to such extent or in such proportion as may be determined by the Registrar.^{Property from which sums due from a society can be recovered}

55. Notwithstanding anything contained in sections 53 and 54, the liability of past members and of the estates of deceased members shall in all cases be subject to the provisions of sections 32 and 63.^{Liability of past members.}

1. Substituted by the A. O. for "Government".

(Secs. 56-59)

Power of revision by Registrar.

56. The Registrar may on application or of his own motion revise any order passed by a person exercising the powers of a Registrar or by a liquidator under section 44.

Bar of jurisdiction of Courts.

57. (1) Save in so far as is expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of any matter concerned with the winding up or dissolution of a registered society under this Act, or of any dispute required by section 48 to be referred to the Registrar.

(2) While a society is in liquidation, no suit or other legal proceeding shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof on any matter touching the affairs of the society, except by leave of the Registrar and subject to such terms as he may impose.

(3) No order of the [Provincial Government]¹, District Judge, Registrar, a person appointed to assist the Registrar, liquidator, or an arbitrator or arbitrators purporting to be one, which under any provision of this Act is declared to be final, shall be liable to be challenged, set aside, modified, revised, or declared void in any Court, upon merits or upon any ground whatsoever except want of jurisdiction.

CHAPTER VIII

MISCELLANEOUS

Registrar and other officers to be public servants.

58. The Registrar, a person exercising the powers of a Registrar, a person authorized to make an inspection under section 34 or 36 or to hold an inquiry under section 35, a liquidator and an arbitrator or arbitrators to whom any dispute is referred under section 48, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Proof of entries in societies' books.

59. (1) A copy of any entry in a book, register or list of a registered society regularly kept in the course of business, shall, if certified in such manner as may be prescribed by the rules, be admissible in evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry would, if produced, have been admissible to prove such matters, transactions and accounts.

(2) In the case of such societies as the [Provincial Government]¹ may by general or special order direct, no officer of a society shall, in any legal proceedings to which the society is not a party, be

¹. Substituted by the A. O. for 'L. G.'

(Secs. 60-64)

compelled to produce any of the society's books, the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

60. The [Provincial Government]¹ may, by general or special order under the provisions of Delegation of power to hear appeals, this and under sections 26, 40

61. (1) The [Provincial Government]¹ may, by general or special order, direct that all or any registered societies situated within a specified area shall be affiliated to a Co-operative Federation in such manner and on such conditions as the [Provincial Government]¹ may direct. Compulsory affiliation of registered societies to Co-operative Federation.

(2) The [Provincial Government]¹ may, by general or special order, regulate, from time to time, the constitution and functions of any Co-operative Federation in respect of which an order of compulsory affiliation may have been passed under sub-section (1).

62. (1) Notwithstanding anything contained in this Act, the [Provincial Government]¹ may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration. Exemptions from requirements as to registration.

(2) The [Provincial Government]¹ may, by general or special order, exempt any registered society from any of the provisions of this Act, or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

63. Notwithstanding any of the provisions of the Indian Limitation Act, 1908, the period of limitation for debt including interest due to a registered society by a member thereof shall be computed from the date on which such member dies or ceases to be a member of the society. Limitation.

64. (1) The [Central Government]², by notification in the [Official Gazette]³ may, in the case of any registered society or class of registered societies, remit the income-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profit. Power to exempt from income-tax, stamp-duty and registration.

(2) The [Collecting Government]⁴ may by notification remit, in the case of any registered society or class of registered societies—

(a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of

1. Substituted by the A. O. for "L. G."

2. Substituted by ibid for "G. G. in C."

3. Substituted by ibid for "Gazette of India".

4. Substituted by ibid for "L. G."

(Sects. 65-66)

a registered society or by an officer or member thereof and relating to the business of such society or any class of such instruments, or decisions, awards or orders of the Registrar or of any arbitrator or arbitrators under this Act, are respectively chargeable; and

(b) any fee payable under the law of registration for the time being in force.

(In this sub-section 'collecting Government' has the same meaning as in the Indian Stamp Act, 1899]¹

Exemption from
compul-
sory regis-
tration of
instruments
relating to
shares and
debentures
of a register-
ed society.

65. Nothing in clauses (b) and (c) of sub-section (1) of section 17 of the Indian Registration Act, 1908, shall apply to —

XVI of

(1) any instrument relating to shares in a registered society, notwithstanding that the assets of such society consist in whole or in part of immoveable property; or

(2) any debenture issued by any such society and not creating, declaring, assigning, limiting, or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(3) any endorsement upon or transfer of any debenture issued by any such society.

Power to
make rules.

66. (1) The [Provincial Government]² may, for the whole or any part of the Province and for any registered society or a class of registered societies, make rules to carry out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(i) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications;

(ii) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the rights of membership;

1. Inserted by the A. O.

2. Substituted by *ibid* for "L. G."

(Sec. 66)

- (iii) prescribe the extent to which a society may limit the number of its members and, subject to the provisions of section 29, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;
- (iv) prescribe the conditions of acceptance of resignation of members, and provide for the expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled;
- (v) provide for the general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;
- (vi) prescribe the matters in respect of which a society may or shall make by-laws, and the procedure to be followed in making, altering and abrogating by-laws, and the conditions to be satisfied prior to such making, alteration or abrogation;
- (vii) prescribe the manner in which managing committees and sub-committees thereof shall be constituted, and
- ing committees and for the powers to be exercised and the duties to be performed by managing committees and other officers;
- (viii) prescribe the conditions under which a society may
- (ix) prescribe the procedure to be followed when societies
- and division;
- (x) prescribe the conditions and terms under which, and regulate the manner in which, funds may be raised by means of shares, deposits or debentures or otherwise;
- (xi) prescribe the conditions to be complied with by members applying for loans, the period for which loans may be made, the amount which may be lent and the manner of repayment;

(Sec. 66)

- (xiii) provide for the deposit or investment of any funds under the control of a society;
- (xiv) prescribe the prohibitions and restrictions subject to which societies may transact business with persons who are not members;
- (xv) prescribe the method of calculating the working capital and the net profits and the conditions under which such profits may be distributed, and the maximum rate of dividend which may be paid by any society or class of societies;
- (xvi) provide for the formation and maintenance of reserve funds and the objects to which such funds may be applied, and for the writing off of bad debts;
- (xvii) prescribe the conditions for refund of share money and transfer of shares;
- (xviii) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the manner of nomination of a person to whom such interest may be paid or transferred;
- (xix) provide for the formation and maintenance of a register of members and, where the liability of members is limited by shares, of a register of shares and shareholders;
- (xx) prescribe the forms to be used and the accounts and registers to be kept and the reports and returns to be submitted by a society and provide for the persons them;
- (xxi) prescribe rules for audit under section 33, and for the periodical publication of balance sheets showing the assets and liabilities of a society;
- (xxii) provide for the persons by whom and the form in which copies of entries in records and registers of societies may be certified and for the charges to be levied for the supply of such copies;
- (xxiii) provide for the custody and destruction of records and registers;

(Sec. 67)

- (xxiii) provide for the procedure to be followed in the appointment or removal of, and for the payment of remuneration to, a liquidator;
- (xxiv) prescribe the procedure to be followed by the liquidator and provide for the manner of disposal of the surplus, if any, of the society;
- (xxv) prescribe the procedure to be followed in presenting and disposing of appeals under this Act;
- (xxvi) prescribe the procedure to be followed in the appointment of an arbitrator or arbitrators and in proceedings before the Registrar, any person exercising the powers of a Registrar and an arbitrator or arbitrators, including the transfer, reference and withdrawal of cases;
- (xxvii) prescribe the procedure and conditions for exercise of the powers conferred by section 49; *¹
- [(xxviii) prescribe the procedure for calling, holding and conducting meetings of creditors under section 24A; and]²
- [(xxix)]³ provide for all matters expressly required or allowed by this Act to be prescribed by rules.

(3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be published in the [Official Gazette]⁴ and on such publication shall have effect as if enacted in this Act.

67. The enactments specified in the schedule are hereby repealed in so far as they apply to the Province of Bihar and Orissa to the extent specified in the fourth column of the said schedule. *Repeals.*

1. The word "and" omitted by the B. and O. Co-operative Societies (Amendment) Act, 1935 (B. & O. Act VIII of 1935), s. 3 (a).

2. Inserted by *ibid.*, s. 3 (b).

3. Substituted by *ibid.*, s. 3 (c) for "(xxviii)" 2.

4. Substituted by the A. O. for "I. o. G."

(Schedule F)

SCHEDEULE

ENACTMENTS REPEALED

(See section 67)

Year	No.	Short title	Extent of repeal
1	2	3	4
1912	II	The Co-operative Societies Act, 1912.	The whole
1920	XXXVIII	The Devolution Act, 1920.	So much as relates to Act II of 1912.

BIHAR AND ORISSA ACT IX OF 1935

THE INDIAN FOREST (BIHAR AND ORISSA AMENDMENT) ACT, 1935

CONTENTS

SECTIONS.

- 1. Short title**
- 2. Amendment of section 26 of the Indian Forest Act, 1927**
- 3. Amendment of section 33 of the Indian Forest Act, 1927**

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BIHAR AND ORISSA ACT IX OF 1935

[THE INDIAN FOREST (BIHAR AND ORISSA AMENDMENT) ACT, 1935]¹

(23rd October, 1935)

An Act to amend the Indian Forest Act, 1927

XVI of 1927 WHEREAS it is expedient further to amend the Indian Forest Act, 1927, in its application to Bihar and Orissa, in the manner hereinafter appearing;

It is hereby enacted as follows :—

1. This Act may be called the Indian Forest (Bihar and Orissa Amendment) Act, 1925. Short titl

XVI of 1927. 2. For sub-section (3) of section 26 of the Indian Forest Act, 1927 (hereinafter referred to as the said Act), the following sub-section shall be substituted, namely :— Amendme
of section
of the Ind
Forest Ac
1927.

“(3) Whenever in a reserved forest—

(a) fire is caused wilfully or by gross negligence, or

(b) theft of forest produce occurs and such theft is, in the opinion of the [Provincial Government]², on such a scale as to be likely to imperil the future yield of such forest,

the [Provincial Government]² may, notwithstanding that any penalty has been inflicted under this section or under any other law for any act referred to in clause (a) or clause (b), direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended,

(i) in the circumstances mentioned in clause (a), for such period as it thinks fit,

(ii) in the circumstances mentioned in clause (b), for a period not exceeding four years.”

3. For sub-section (2) of section 33 of the said Act, the following sub-section shall be substituted, namely :— Amendmen
of section
of the Ind
Forest Ac
1927.

“(2) Whenever in a protected forest—

(a) fire is caused wilfully or by gross negligence, or

1. LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Bihar and Orissa Gazette, 1935, Pt. V, p 8; for Report of the Select Committee, see *ibid*, Pt. V, pp. 204-207; for Proceedings in Council, see the Bihar and Orissa Legislative Assembly Debates, 1933, Vol. XXXII, p. 590.

2. Substituted by the A. O for “L.G.”

(Sec. 3)

(b) theft of forest produce occurs and such theft is, in the opinion of the [Provincial Government]¹ on such a scale as to be likely to imperil the future yield of such forest,

the [Provincial Government]¹ may, notwithstanding that any penalty has been inflicted under this section or under any other law for any act referred to in clause (a) or clause (b), direct that in such forest or any portion thereof the exercise of any right of pasture or to forest produce shall be suspended,

(i) in the circumstances mentioned in clause (a), for such period as it thinks fit,

(ii) in the circumstances mentioned in clause (b), for a period not exceeding four years."

¹ substituted by the A. G. for "L.G."

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